FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 160

SENATE BILL NO. 2122

(Human Services Committee)
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact subsections 3 and 4 of section 19-02.1-14.1 of the North Dakota Century Code, relating to electronic prescriptions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 3 and 4 of section 19-02.1-14.1 of the North Dakota Century Code are amended and reenacted as follows:

3. If a practitioner prescribes a drug by its brand name, the pharmacist may exercise professional judgment in the economic interest of the patient by selecting a drug product with the same generic name and demonstrated therapeutical equivalency as the one prescribed for dispensing and sale to the patient unless the practitioner specifically indicates in the practitioner's own handwriting "brand medically necessary" on a written prescription or expressly indicates that an oral prescription is to be dispensed as communicated. If the prescription is created electronically by the prescriber, the required legend must appear on the practitioner's screen. The practitioner must take a specific overt action to include the "brand medically necessary" language with the electronic transmission. The pharmacist shall note the instructions on the file copy of the prescription, or maintain the digital record as transmitted if it is an electronic prescription. A reminder legend must be placed on all prescription forms or appear on the computer screen of the electronic prescribing system. The legend must state "In order to require that a brand name product be dispensed, the practitioner must handwrite the words 'brand medically necessary'.". The legend printed on the prescription form or appearing on the prescriber's computer screen must be in at least six-point uppercase print or font. The pharmacist may not substitute a generic name drug product unless its price to the purchaser is less than the price of the prescribed drug product. In addition, a pharmacist may not substitute drug products in the following dosage forms: enteric coated tablets, controlled release products, injectable suspensions other than antibiotics, suppositories containing active ingredients for which systemic absorption is necessary for therapeutic activity, and different delivery systems for aerosol and nebulizer drugs. In the event that any drug listed above is, subsequent to January 1, 1982, determined to be therapeutically equivalent, then the previously mentioned substitution ban is automatically removed for that drug. The pharmacist shall inform the person receiving the drug when a prescription for a brand name drug product does not require that the prescribed drug be dispensed and of the person's right to refuse a generic name drug product selected by the pharmacist. The

pharmacy file copy of every prescription must include the brand name, if any, or the name of the manufacturer, packer, or distributor of the generic name drug dispensed. A pharmacist who selects and dispenses a therapeutically equivalent generic name drug product shall assume no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its generic name. The practitioner is not liable for the substitution made by a pharmacist.

4. In the case of a prescription for which a maximum allowable cost program for purposes of reimbursement has been established under title XIX of the federal Social Security Act, the following also apply:

   a. If the practitioner has instructed the pharmacist to dispense as written, the words "brand medically necessary" must also be written on the prescription in the practitioner's own handwriting, or appear as part of the electronic prescription as noted in subsection 3. The pharmacist may dispense a therapeutically equivalent generic name drug product if this handwritten or electronic instruction does not appear on the prescription.

   b. If the pharmacist is instructed orally to dispense a brand name drug as prescribed, the pharmacist shall reduce the prescription to writing and shall note the instructions on the file copy of the prescription. ~~The prescription must then be signed by the practitioner and the words "brand necessary" must also be written on the prescription in the practitioner's own handwriting.~~

   c. If the practitioner has not instructed the pharmacist to dispense a brand name drug or medicine and the patient specifically requests a brand name drug or medicine, the patient shall pay the difference between the price to the patient of the brand name drug or medicine and the therapeutically equivalent generic name drug or medicine if the price of the brand name drug or medicine is higher.

Approved April 20, 2011
Filed April 20, 2011

CHAPTER 161

SENATE BILL NO. 2119

(Judiciary Committee)
(At the request of the State Board of Pharmacy)

AN ACT to amend and reenact sections 19-03.1-05, 19-03.1-07, 19-03.1-09, 19-03.1-11, and 19-03.1-13 of the North Dakota Century Code, relating to the scheduling of controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-05. Schedule I.

1. The controlled substances listed in this section are included in schedule I.

2. Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

3. Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation:

   a. Acetyl-alpha-methylfentanyl (also known as N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).

   b. Acetylmethadol.

   c. Allylprodine.

   d. Alphacetylmethadol.

   e. Alphameprodine.

   f. Alphamethadol.

   g. Alpha-methylfentanyl (also known as N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine).

   h. Alpha-methylthiofentanyl (also known as N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

   i. Benzethidine.

   j. Betacetylmethadol.

k. Beta-hydroxyfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).

l. Beta-hydroxy-3-methylfentanyl (also known as N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).

m. Betameprodine.

n. Betamethadol.

o. Betaprodine.

p. Clonitazene.

q. Dextromoramide.

r. Diampromide.

s. Diethylthiambutene.

t. Difenoxin.

u. Dimenoxadol.

v. Dimepheptanol.

w. Dimethylthiambutene.

x. Dioxaphetyl butyrate.

y. Dipipanone.

z. Ethylmethylthiambutene.

aa. Etonitazene.

bb. Etoxeridine.

cc. Furethidine.

dd. Hydroxypethidine.

ee. Ketobemidone.

ff. Levomoramide.

gg. Levophenacylmorphan.

hh. 3-Methylfentanyl (also known as N-[3-methyl-1-(2-phenylethyl) 4-piperidyl]-N-phenylpropanamide).

ii. 3-Methylthiofentanyl (also known as N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).

jj. Morpheridine.

kk. MPPP (also known as 1-methyl-4-phenyl-4-propionoxypiperidine).

ll. Noracymethadol.

mm. Norlevorphanol.

nn. Normethadone.

oo. Norpipanone.

pp. Para-fluorofentanyl (also known as N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide).

qq. PEPAP (1-(2-Phenylethyl)-4-Phenyl-4-acetoxypiperidine).

rr. Phenadoxone.

ss. Phenampromide.

tt. Phenomorphan.

uu. Phenoperidine.

vv. Piritramide.

ww. Proheptazine.

xx. Properidine.

yy. Propiram.

zz. Racemoramide.

aaa. Thiofentanyl (also known as N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).

bbb. Tilidine.

ccc. Trimeperidine.

4. Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Acetorphine.

b. Acetyldihydrocodeine.

c. Benzylmorphine.

d. Codeine methylbromide.

e. Codeine-N-Oxide.

f. Cyprenorphine.

g. Desomorphine.

h. Dihydromorphine.

i. Drotebanol.

j. Etorphine (except hydrochloride salt).

k. Heroin.

l. Hydromorphinol.

m. Methyldesorphine.

n. Methyldihydromorphine.

o. Morphine methylbromide.

p. Morphine methylsulfonate.

q. Morphine-N-Oxide.

r. Myrophine.

s. Nicocodeine.

t. Nicomorphine.

u. Normorphine.

v. Pholcodine.

w. Thebacon.

5. Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers):

   a. Alpha-ethyltryptamine, its optical isomers, salts, and salts of isomers (also known as etryptamine; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole).

   b. Alpha-methyltryptamine.

   c. 4-bromo-2, 5-dimethoxy-amphetamine (also known as 4-bromo-2, 5-dimethoxy-a-methylphenethylamine; 4-bromo-2, 5-DMA).

   d. 4-bromo-2, 5-dimethoxyphenethylamine (also known as 4-bromo-2, 5-DMPEA).

   e. 2,5-dimethoxy-amphetamine (also known as 2, 5-dimethoxy-a-methylphenethylamine; 2, 5-DMA).

f. 2,5-dimethoxy-4-ethylamphetamine (also known as DOET).

g. 2,5-dimethoxy-4-(n)-propylthiophenethylamine (also known as 2C-T-7).

h. 4-methoxyamphetamine (also known as 4-methoxy-a-methylphenethylamine; paramethoxyamphetamine; PMA).

i. 5-methoxy-3,4-methylenedioxy-amphetamine.

j. 4-methyl-2,5-dimethoxy-amphetamine (also known as 4-methyl-2,5-dimethoxy-a-methylphenethylamine; DOM and STP).

k. 5-Methoxy-N,N-Dimethyltryptamine.

l. 3,4-methylenedioxy amphetamine.

~~l.~~m. 3,4-methylenedioxymethamphetamine (also known as MDMA).

~~m.~~n. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine, N-ethyl, MDA, MDE, MDEA.

~~n.~~o. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenylamine, and N-hydroxy MDA.

~~o.~~p. 3,4,5-trimethoxy amphetamine.

~~p.~~q. Bufotenine (also known as 3-(Beta-Dimethyl-aminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine).

~~q.~~r. 5-methoxy-N,N-diisopropyltryptamine.

~~r.~~s. Diethyltryptamine (also known as N, N-Diethyltryptamine; DET).

~~s.~~t. Dimethyltryptamine (also known as DMT).

~~t.~~u. Hashish.

~~u.~~v. Ibogaine (also known as 7-Ethyl-6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-methano-5 H-pyrido [1', 2':1,2] azepino (5,4-b) indole; Tabernanthe iboga).

~~v.~~w. Lysergic acid diethylamide.

~~w.~~x. Marijuana.

~~x.~~y. Mescaline.

~~y.~~z. Parahexyl (also known as 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzol[b,d]pyran; Synhexyl).

~~z.~~aa. Peyote (all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound,

manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or its extracts).

~~aa.~~bb. N-ethyl-3-piperidyl benzilate.

~~bb.~~cc. N-methyl-3-piperidyl benzilate.

~~cc.~~dd. Psilocybin.

~~dd.~~ee. Psilocyn.

~~ee.~~ff. Tetrahydrocannabinols ~~(synthetic) equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. Or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following~~, meaning tetrahydrocannabinols naturally contained in a plant of the genus Cannabis (cannabis plant), as well as synthetic equivalents of the substances contained in the cannabis plant, or in the resinous extractives of such plant, including synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity to those substances contained in the plant, such as the following:

(1) Delta-1 cis or trans tetrahydrocannabinol, and their optical isomers.

(2) Delta-6 cis or trans tetrahydrocannabinol, and their optical isomers.

(3) Delta-3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

gg. Cannabinoids, synthetic. This subdivision contains the synthetic chemicals which have similar effects on the cannabinoid receptors. It includes the chemicals and chemical groups listed below, including their homologues, salts, isomers, and salts of isomers. The term "isomer" includes the optical, position, and geometric isomers.

(1) Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

(a) 1-Pentyl-3-(1-naphthoyl)indole - Other names: JWH-018 and AM-678.

(b) 1-Butyl-3-(1-naphthoyl)indole - Other names: JWH-073.

(c) 1-Pentyl-3-(4-methoxy-1-naphthoyl)indole - Other names: JWH-081.

(d) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole - Other names: JWH-200.

(e) 1-Propyl-2-methyl-3-(1-naphthoyl)indole - Other names: JWH-015.

(f) 1-Hexyl-3-(1-naphthoyl)indole - Other names: JWH-019.

(g) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole - Other names: JWH-122.

(h) 1-Pentyl-3-(4-ethyl-1-naphthoyl)indole - Other names: JWH-210.

(i) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole - Other names: JWH-398.

(j) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole - Other names: AM-2201.

(2) Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Examples include:

(a) 1-Pentyl-1H-indol-3-yl-(1-naphthyl)methane - Other names: JWH-175.

(b) 1-Pentyl-1H-indol-3-yl-(4-methyl-1-naphthyl)methane - Other names: JWH-184.

(3) Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include:
(5-(2-fluorophenyl)-1-pentylpyrrol-3-yl)-naphthalen-1-ylmethanone - Other names: JWH-307.

(4) Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2 (4 morpholinyl)ethyl group whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent. Examples include: E-1-[1-(1-Naphthalenylmethylene)-1H-inden-3-yl]pentane - Other names: JWH-176.

(5) Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent,

whether or not substituted in the phenyl ring to any extent. Examples include:

(a) 1-(2-cyclohexylethyl)-3-(2-methoxyphenylacetyl)indole - Other names: RCS-8.

(b) 1-Pentyl-3-(2-methoxyphenylacetyl)indole - Other names: JWH-250.

(c) 1-Pentyl-3-(2-methylphenylacetyl)indole - Other names: JWH-251.

(d) 1-Pentyl-3-(2-chlorophenylacetyl)indole - Other names: JWH-203.

(6) Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not substituted in the cyclohexyl ring to any extent. Examples include:

(a) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: CP 47,497.

(b) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol - Other names: Cannabicyclohexanol and CP 47,497 C8 homologue.

(c) 5-(1,1-dimethylheptyl)-2-[(1R,2R)-5-hydroxy-2-(3-hydroxypropyl)cyclohexyl]-phenol - Other names: CP 55,940.

(7) Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl group whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Examples include:

(a) 1-Pentyl-3-(4-methoxybenzoyl)indole - Other names: RCS-4.

(b) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole) - Other names: AM-694.

(c) (4-Methoxyphenyl)-[2-methyl-1-(2-(4-morpholinyl)ethyl)indol-3-yl]methanone - Other names: WIN 48,098 and Pravadoline.

(8) Others specifically named:

(a) (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a tetrahydrobenzo[c]chromen-1-ol - Other names: HU-210.

(b) (6aS,10aS)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol - Other names: Dexanabinol and HU-211.

(c) 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-napthalenylmethanone - Other names: WIN 55,212-2.

~~ff.~~hh. Ethylamine analog of phencyclidine (also known as N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE).

~~gg.~~ii. Pyrrolidine analog of phencyclidine (also known as 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP).

~~hh.~~jj. Thiophene analog of phencyclidine (also known as (1-[1-(2-thienyl) cyclohexyl] piperidine; 2-Thienylanalog of phencyclidine; TPCP, TCP).

~~ii.~~kk. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine (also known as TCPy).

~~jj.~~ll. Salvia divinorum, salvinorin A, or any of the active ingredients of salvia divinorum.

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

   a. Flunitrazepam.

   b. Gamma-hydroxybutyric acid.

   c. Mecloqualone.

   d. Methaqualone.

7. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

   a. Aminorex (also known as 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine).

   b. Cathinone (also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone).

   c. Fenethylline.

   d. Mephedrone (2-methylamino-1-p-tolylpropan-1-one) also known as 4-methylmethcathinone (4-MMC), 4-methylephedrone.

   e. (±)cis-4-methylaminorex (also known as (±)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

   f. 3,4-Methylenedioxypyrovalerone (MDPV).

   ~~e.~~g. Methcathinone (also known as (2-methylamino-1-phenylpropan-1-one).

~~f.~~h. N-Benzylpiperazine (also known as BZP, 1-benzylpiperazine).

~~g.~~i. N-ethylamphetamine.

~~h.~~j. N, N-dimethylamphetamine (also known as N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine).

SECTION 2. AMENDMENT. Section 19-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-07. Schedule II.

1. The controlled substances listed in this section are included in schedule II.

2. Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

3. Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

   a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone and their respective salts, but including the following:

      (1) Codeine.

      (2) Dihydroetorphine.

      (3) Ethylmorphine.

      (4) Etorphine hydrochloride.

      (5) Granulated opium.

      (6) Hydrocodone.

      (7) Hydromorphone.

      (8) Metopon.

      (9) Morphine.

      (10) Opium extracts.

      (11) Opium fluid.

      (12) Oripavine.

      (13) Oxycodone.

(14) Oxymorphone.

(15) Powder opium.

(16) Raw opium.

(17) Thebaine.

(18) Tincture of opium.

b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision a, but not including the isoquinoline alkaloids of opium.

c. Opium poppy and poppy straw.

d. Coca leaves and any salt, compound, derivative, or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, except that the nondosage substances must include decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrine alkaloids of the opium poppy).

4. Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of those isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan and levopropoxyphene excepted:

a. Alfentanil.

b. Alphaprodine.

c. Anileridine.

d. Bezitramide.

e. Bulk dextropropoxyphene (nondosage forms).

f. Carfentanil.

g. Dihydrocodeine.

h. Diphenoxylate.

i. Fentanyl.

j. Isomethadone.

k. Levo-alphaacetylmethadol (LAAM).

l. Levomethorphan.

m. Levorphanol.

n. Metazocine.

o. Methadone.

p. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.

q. Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid.

r. Pethidine (also known as meperidine).

s. Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine.

t. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.

u. Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

v. Phenazocine.

w. Priminodine.

x. Racemethorphan.

y. Racemorphan.

z. Remifentanil.

aa. Sufentanil.

<u>bb.</u> <u>Tapentadol.</u>

5. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.

b. Lisdexamfetamine, its salts, isomers, and salts of isomers.

c. Methamphetamine, its salts, isomers, and salts of isomers.

d. Phenmetrazine and its salts.

e. Methylphenidate.

6. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

a. Amobarbital.

b. Glutethimide.

c. Pentobarbital.

d. Phencyclidine.

e. Secobarbital.

7. Hallucinogenic substances. Nabilone [another name for nabilone (±)-trans-3-(1, 1-dimethylheptyl)-6, 6a, 7, 8, 10, 10a-hexahydro-1-hydroxy-6, 6-dimethyl-9Hdibenzo [b, d] pyran-9-one].

8. Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:

   a. Immediate precursor to amphetamine and methamphetamine: Phenylacetone. Some trade or other names: phenyl-2-propanone; P2P, benzyl methyl ketone; methyl benzyl ketone.

   b. Immediate precursors to phencyclidine (PCP):

      (1) 1-phenylcyclohexylamine.

      (2) 1-piperidinocyclohexanecarbonitrile (PCC).

   c. Immediate precursors to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

SECTION 3. AMENDMENT. Section 19-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-09. Schedule III.

1. The controlled substances listed in this section are included in schedule III.

2. Schedule III consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

3. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

   a. Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II and any other drug of the quantitative composition shown in that schedule for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

   b. Benzphetamine.

c. Chlorphentermine.

d. Clortermine.

e. Phendimetrazine.

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:

a. Any compound, mixture, or preparation containing:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

b. Any suppository dosage form containing:

(1) Amobarbital;

(2) Secobarbital;

(3) Pentobarbital;

or any salt of any of these drugs and approved by the food and drug administration for marketing only as a suppository.

c. Any substance that contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid, except those substances which are specifically listed in other schedules thereof.

d. Chlorhexadol.

e. Embutramide.

f. Gamma-hydroxybutyric acid in a United States food and drug administration-approved drug product.

g. Ketamine.

h. Lysergic acid.

i. Lysergic acid amide.

j. Methyprylon.

k. Sulfondiethylmethane.

l. Sulfonethylmethane.

m. Sulfonmethane.

n. Tiletamine and zolazepam or any salt thereof. Some trade or other names for a tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-2(2-fluorophenyl)-6, 8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon.

5. Nalorphine.

6. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

a. (1) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

(2) Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(3) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium.

(4) Not more than 300 milligrams of hydrocodone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

b. Buprenorphine.

7. Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any of the following anabolic steroids:

a. 3beta,17-dihydroxy-5a-androstane;

b. 3alpha,17beta-dihydroxy-5a-androstane;

c. 5alpha-androstan-3,17-dione;

d. 1-androstenediol (3beta,17beta-dihydroxy-5alpha-androst-1-ene);

e. 1-androstenediol (3alpha,17beta-dihydroxy-5alpha-androst-1-ene);

f. 4-androstenediol (3beta,17beta-dihydroxy-4-ene);

g. 5-androstenediol (3beta,17beta-dihydroxy-androst-5-ene);

h. 1-androstenedione ([5alpha]-androst-1-en-3,17-dione);

i. 4-androstenedione (androst-4-en-3,17-dione);

j. 5-androstenedione (androst-5-en-3,17-dione);

k. Bolasterone (7alpha,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

l. Boldenone (17beta-hydroxyandrost-1,4,-diene-3-one);

m. Boldione (androsta-1,4-diene-3,17-dione);

n. Calusterone (7beta,17alpha-dimethyl-17beta-hydroxyandrost-4-en-3-one);

o. Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);

p. Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

q. Delta-1-dihydrotestosterone (also known as '1-testosterone') (17beta-hydroxy-5alpha-androst-1-en-3-one);

r. Desoxymethyltestosterone (17a-methyl-5a-androst-2-en-17ol) (also known as madol);

s. 4-dihydrotestosterone (17beta-hydroxy-androstan-3-one);

t. Drostanolone (17beta-hydroxy-2alpha-methyl-5alpha-androstan-3-one);

u. Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);

v. Fluoxymesterone (9-fluoro-17alpha-methyl-11beta, 17beta-dihydroxyandrost-4-en-3-one);

w. Formebolone (2-formyl-17alpha-methyl-11alpha, 17beta-dihydroxyandrost-1,4-dien-3-one);

x. Furazabol (17alpha-methyl-17beta-hydroxyandrostano[2,3-c]-furazan);

y. 13beta-ethyl-17alpha-hydroxygon-4-en-3-one;

z. 4-hydroxytestosterone (4,17beta-dihydroxy-androst-4-en-3-one);

aa. 4-hydroxy-19-nortestosterone (4,17beta-dihydroxy-estr-4-en-3-one);

bb. Mestanolone (17alpha-methyl-17beta-hydroxy-5-androstan-3-one);

cc. Mesterolone (1alpha-methyl-17beta-hydroxy-[5alpha]-androstan-3-one);

dd. Methandienone (17alpha-methyl-17beta-dihydroxyandrost-1,4-dien-3-one);

ee. Methandriol (17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);

ff. Methenolone (1-methyl-17beta-hydroxy-5alpha-androst-1-en-3-one);

gg. 17alpha-methyl-3beta,17beta-dihydroxy-5a-androstane;

hh. 17alpha-methyl-3alpha,17beta-dihydroxy-5a-androstane;

ii. 17alpha-methyl-3beta,17beta-dihyroxyandrost-4-ene;

jj. 17alpha-methyl-4-hydroxynandrolone (17alpha-methyl-4-hydroxy-17beta-hydroxyestr-4-en-3-one);

kk. Methyldienolone (17alpha-methyl-17beta-hydroxyestra-4,9(10)-dien-3-one);

ll. Methyltrienolone (17alpha-methyl-17beta-hydroxyestra-4,9(11)-trien-3-one);

mm. Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);

nn. Mibolerone (7alpha,17alpha-dimethyl-17beta-hydroxyestr-4-en-3-one);

oo. 17alpha-methyl-delta1-dihydrotestosterone (17bbeta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) (also known as '17-alpha-methyl-1-testosterone');

pp. Nandrolone (17beta-hydroxyestr-4-en-3-one);

qq. 19-nor-4-androstenediol (3beta,17beta-dihydroxyestr-4-ene);

rr. 19-nor-4-androstenediol (3alpha,17beta-dihydroxyestr-4-ene);

ss. 19-nor-5-androstenediol (3beta,17beta-dihydroxyestr-5-ene);

tt. 19-nor-5-androstenediol (3alpha,17-beta-dihydroxyester-5-ene);

uu. 19-nor-4-androstenedione (estr-4-en-3,17-dione);

vv. 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);

ww. 19-nor-5-androstenedione (estr-5-en-3,17-dione);

xx. Norboletheone (13beta,17alpha-diethyl-17beta-hydroxygon-4-en-3-one);

yy. Norclostebol (4-chloro-17beta-hydroxyestr-4-en-3-one);

zz. Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);

aaa. Normethandrolone (17alpha-methyl-17beta-hydroxyestr-4-en-3-one);

bbb. Oxandrolone (17alpha-methyl-17beta-hydroxy-2-oxa-[5alpha]-androstan-3-one);

ccc. Oxymesterone (17alpha-methyl-4-17beta-dihydroxyandrost-4-en-3-one);

ddd. Oxymetholone (17alpha-methyl-2-hydroxymethylene-17beta-hydroxy [5alpha]-androstan-3-one);

eee. Stanozolol (17alpha-methyl-17beta-hydroxy[5alpha]-androst-2-eno[3,2-c]-pyrazole);

fff. Stenbolone (17beta-hydroxy-2-methyl-[5alpha]-androst-1-en-3-one);

ggg. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);

hhh. Testosterone (17beta-hydroxyandrost-4-en-3-one);

iii. Tetrahydrogestrinone (13beta,17alpha-diethyl-17beta-hydroxygon-4,9,11-trien-3-one);

jjj. Trenbolone (17beta-hydroxyestr-4,9,11-trien-3-one);

or any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth.

The term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for administration unless any person prescribes, dispenses, possesses, delivers, or distributes for human use.

8. Hallucinogenic substances.

a. Dronabinol (synthetic) [(-)-delta-9-(trans)-tetrahydrocannabinol] in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product.

b. Any product in hard or soft gelatin capsule form containing natural dronabinol (derived from the cannabis plant) or synthetic dronabinol (produced from synthetic materials) in sesame oil, for which an abbreviated new drug application has been approved by the food and drug administration under section 505(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(j)] which references as its listed drug the drug product referred to in subdivision a.

9. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections 3 and 4 from the application of all or any part of this chapter if the compound,

mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

SECTION 4. AMENDMENT. Section 19-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-11. Schedule IV.

1. The controlled substances listed in this section are included in schedule IV.

2. Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

   a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

   b. Dextropropoxyphene (also known as alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

4. Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

   a. Alprazolam.

   b. Barbital.

   c. Bromazepam.

   d. ~~Butorphanol.~~

   ~~e.~~ Camazepam.

   e. Carisoprodol.

   f. Chloral betaine.

   g. Chloral hydrate.

   h. Chlordiazepoxide.

   i. Clobazam.

   j. Clonazepam.

k. Clorazepate.

l. Clotiazepam.

m. Cloxazolam.

n. Delorazepam.

o. Diazepam.

p. Dichloralphenazone.

q. Estazolam.

r. Ethchlorvynol.

s. Ethinamate.

t. Ethyl loflazepate.

u. Fludiazepam.

v. Flurazepam.

w. Fospropofol.

x. Halazepam.

~~x.~~y. Haloxazolam.

~~y.~~z. Indiplon.

~~z.~~aa. Ketazolam.

~~aa.~~bb. Loprazolam.

~~bb.~~cc. Lorazepam.

~~cc.~~dd. Lormetazepam.

~~dd.~~ee. Mebutamate.

~~ee.~~ff. Medazepam.

~~ff.~~gg. Meprobamate.

~~gg.~~hh. Methohexital.

~~hh.~~ii. Methylphenobarbital (also known as mephobarbital).

~~ii.~~jj. Midazolam.

~~jj.~~kk. Nimetazepam.

~~kk.~~ll. Nitrazepam.

~~ll.~~mm. Nordiazepam.

~~mm.~~nn. Oxazepam.

~~nn.~~oo. Oxazolam.

~~oo.~~pp. Paraldehyde.

~~pp.~~qq. Petrichloral.

~~qq.~~rr. Phenobarbital.

~~rr.~~ss. Pinazepam.

tt. Propofol.

~~ss.~~uu. Prazepam.

~~tt.~~vv. Quazepam.

~~uu.~~ww. Temazepam.

~~vv.~~xx. Tetrazepam.

~~ww.~~yy. Triazolam.

~~xx.~~zz. Zaleplon.

~~yy.~~aaa. Zolpidem.

~~zz.~~bbb. Zopiclone.

5. Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

6. Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

   a. Cathine.

   b. Diethylpropion.

   c. Fencamfamin.

   d. Fenproporex.

   e. Mazindol.

   f. Mefenorex.

   g. Modafinil.

h. Pemoline (including organometallic complexes and chelates thereof).

i. Phentermine.

j. Pipradrol.

k. Sibutramine.

l. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).

7. Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of ~~pentazocine~~:

a. Pentazocine, including its salts.

b. Butorphanol, including its optical isomers.

8. The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection 2 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

SECTION 5. AMENDMENT. Section 19-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-13. Schedule V.

1. The controlled substances listed in this section are included in schedule V.

2. Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

3. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing ~~buprenerphine or its~~any of the following narcotic drugs and their salts.

4. Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which includes one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone.

a. Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

b. Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

c. Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

5. Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

a. Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide].

b. Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

6. Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 162

SENATE BILL NO. 2251

(Senators Olafson, Nodland, Triplett)
(Representatives Conklin, Maragos, Rohr)

AN ACT to amend and reenact subsection 1 of section 19-03.1-23 and subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code, relating to manufacture, delivery, or possession with intent to manufacture or deliver controlled substances.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:

   a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:

      (1) For a second offense, to imprisonment for at least five years.

      (2) For a third or subsequent offense, to imprisonment for twenty years.

   b. Any other controlled substance classified in schedule I, II, or III~~,~~ is guilty of a class B felony~~, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony~~. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:

      (1) For a second offense, to imprisonment for at least three years.

      (2) For a third or subsequent offense, to imprisonment for ten years.

   c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:

      (1) For a second offense, to imprisonment for at least six months.

      (2) For a third offense, to imprisonment for at least one year.

      (3) For a fourth or subsequent offense, to imprisonment for five years.

   d. A substance classified in schedule V, is guilty of a class A misdemeanor.

[65] **SECTION 2. AMENDMENT.** Subsection 1 of section 19-03.1-23.1 of the North Dakota Century Code is amended and reenacted as follows:

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~~, delivery, or possession, with intent to manufacture or deliver 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;

   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;

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[65] Section 19-03.1-23.1 was also amended by section 1 of Senate Bill No. 2223, chapter 163.

(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 or 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.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 163

SENATE BILL NO. 2223

(Senators Luick, Miller, Olafson, Murphy)
(Representatives Wall, Williams)

AN ACT to amend and reenact section 19-03.1-23.1 of the North Dakota Century Code, relating to aggravating factors in drug offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[66] **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 child care or preschool facility, 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;

   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;

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[66] Section 19-03.1-23.1 was also amended by section 2 of Senate Bill No. 2251, chapter 162.

(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 or 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 April 26, 2011
Filed April 26, 2011

CHAPTER 164

SENATE BILL NO. 2259

(Senators Klein, J. Lee, Robinson)
(Representatives Keiser, Koppelman, Mueller)

AN ACT to create and enact a new subsection to section 19-03.4-08 of the North Dakota Century Code, relating to records of the sale of methamphetamine precursors; and to amend and reenact subsection 4 of section 19-03.4-08 of the North Dakota Century Code, relating to records of the sale of methamphetamine precursors.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 19-03.4-08 of the North Dakota Century Code is amended and reenacted as follows:

4. a. When offering scheduled listed chemical products for retail sale, a person shall require, obtain, and make a written record of the identification of the person purchasing the scheduled listed chemical product, the identification being a document issued by a government agency as described in subdivisions a and b of subsection 6, and shall deliver the product directly into the custody of the purchaser.

   b. The person shall maintain a written list of sales that identifies the product by name, the quantity sold, the names and addresses of the purchasers, the dates and times of the sales, a unique identification number relating to the electronic record submitted into the electronic recordkeeping system described in section 2 of this Act, and a notice to a purchaser that the making of false statements or misrepresentations may subject the purchaser to federal and state criminal penalties. The purchaser shall sign the written list of sales and enter the purchaser's name, address, and the date and time of the sale. The person making the sale shall determine that the name entered by the purchaser corresponds with the name on the identification provided by the purchaser and that the date and time of the purchase is correct. The person making the sale shall enter the name of the product and the quantity sold on the list.

   c. Before completing the transaction, the person making the sale shall submit all the information from the written record into the electronic recordkeeping system described in section 2 of this Act.

   d. The person shall maintain the record of identification required by this ~~subsection~~section 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. A person who in good faith releases the information in the record of identification to federal, state, or local law enforcement authorities is immune from civil liability for such release unless the release constitutes gross negligence or intentional, wanton, or willful misconduct.

SECTION 2. A new subsection to section 19-03.4-08 of the North Dakota Century Code is created and enacted as follows:

13. a. The bureau of criminal investigation shall provide retailers of listed chemical products access to a real-time electronic recordkeeping system to enter into the record system any transaction required to be recorded by subsection 4.

b. The real-time electronic recordkeeping system must be maintained in a central repository as defined in subsection 1 of section 19-03.5-01, and must have the capability to calculate state and federal ephedrine base, pseudoephedrine base, and phenylpropanolamine base purchase limitations.

c. The electronic recordkeeping system must include a record of all the information in the written record, the unique identification number, and certification that a signature has been obtained.

d. The information entered into the electronic recordkeeping system is subject to subdivision d of subsection 4.

e. If feasible, the prescription drug monitoring system utilized under chapter 19-03.5 may be used as the electronic recordkeeping system. The bureau of criminal investigation may contract with a private vendor to implement this subsection. A contractor shall comply with the confidentiality requirements of this chapter and is subject to sanctions for violation of confidentiality requirements, including termination of the contract.

f. The bureau of criminal investigation may not charge a retailer a fee for the establishment of, maintenance of, or access to, the electronic recordkeeping system.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 165

SENATE BILL NO. 2151

(Senators J. Lee, Mathern, Uglem)
(Representatives Delmore, Weisz)

AN ACT to amend and reenact subsection 3 of section 19-03.5-03 of the North Dakota Century Code, relating to access to the prescription drug monitoring program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 19-03.5-03 of the North Dakota Century Code is amended and reenacted as follows:

3. Unless disclosure is prohibited by law, the board may provide data in the central repository to:

   a. A prescriber for the purpose of providing medical care to a patient, a dispenser for the purpose of filling a prescription or providing pharmaceutical care for a patient, a prescriber or dispenser inquiring about the prescriber's or dispenser's own prescribing activity, or a prescriber or dispenser in order to further the purposes of the program;

   b. An individual who requests the prescription information of the individual or the individual's minor child;

   c. State boards and regulatory agencies that are responsible for the licensing of individuals authorized to prescribe or dispense controlled substances if the board or regulatory agency is seeking information from the central repository that is relevant to an investigation of an individual who holds a license issued by that board or regulatory agency;

   d. Local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances who seek information for the purpose of an investigation or prosecution of the drug-related activity or probation compliance of an individual;

   e. The department of human services for purposes regarding the utilization of controlled substances by a medicaid recipient;

   f. Workforce safety and insurance for purposes regarding the utilization of controlled substances by a claimant;

   g. Judicial authorities under grand jury subpoena or court order or equivalent judicial process for investigation of criminal violations of controlled substances laws;

   h. Public or private entities for statistical, research, or educational purposes after the information is de-identified with respect to any prescriber, dispenser, or patient who received a prescription for a controlled substance; ~~or~~

i. A peer review committee which means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review as defined in chapter 23-34; or

j. A licensed addiction counselor for the purpose of providing services for a licensed treatment program in this state.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 166

HOUSE BILL NO. 1418

(Representatives Kasper, N. Johnson, Keiser, Vigesaa)
(Senators Wardner, Klein)

AN ACT to provide standards for audits of pharmacy records; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1.

Definitions.

For the purposes of this Act:

1. "Entity" means a managed care company, an insurance company, a third-party payer, a pharmacy benefits manager, or any other organization that represents an insurance company, a third-party payer, or a pharmacy benefits manager.

2. "Insurance company" includes any corporation, association, benefit society, exchange, partnership, or individual engaged as principal in the business of insurance.

3. "Managed care company" is an entity that handles both health care and health care financing.

4. "Pharmacy benefits manager" means a person that performs pharmacy benefits management and includes any other person acting for such person under a contractual or employment relationship in the performance of pharmacy benefits management for a managed care company, nonprofit hospital or medical service organization, insurance company, third-party payer, or health program administered by a state agency.

5. "Plan sponsor" means the employer in the case of an employee benefit plan established or maintained by a single employer, or the employee organization in the case of a plan established or maintained by an employee organization, an association, joint board of trustees, committee, or other similar group that establishes or maintains the plan.

6. "Third-party payer" means an organization other than the patient or health care provider involved in the financing of personal health services.

SECTION 2.

Pharmacy benefits manager audit - Rules.

1. An entity conducting an audit of a pharmacy shall:

a. If conducting an onsite audit, give the pharmacy a written notice at least fourteen business days before conducting an initial audit.

b. If the audit involves clinical or professional judgment, ensure the audit is conducted by or in consultation with a pharmacist licensed in any state and employed by or contracted with the pharmacy benefits manager.

c. Limit the audit to no more than twenty-four months from the date that the claim was submitted to or adjudicated by the entity. A claim may not be reviewed that is older than twenty-four months from the date of the audit, unless a longer period is permitted under federal law.

d. Refrain from conducting the audit during the first five business days of the month unless otherwise consented to by the pharmacy.

e. Refrain from entering the pharmacy area where patient-specific information is available and remain out of sight and hearing range of the pharmacy customers. The pharmacy shall designate an area for auditors to conduct their business.

f. Allow the pharmacy to use the records, including a medication administration record, of a hospital, physician, or other authorized practitioner to validate the pharmacy record and delivery.

g. Allow the pharmacy to use any legal prescription, including medication administration records, electronic documents, or documented telephone calls from the prescriber or the prescriber's agents, to validate claims in connection with prescriptions and refills or changes in prescriptions.

2. An audit may not allow a recoupment to be assessed for items on the face of a prescription not required by rules adopted by the state board of pharmacy with respect to patient hard copy prescription forms for controlled and uncontrolled drugs.

3. A finding of overpayment or underpayment may be based only on the actual overpayment or underpayment and not on a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs. A calculation of an overpayment may not include dispensing fees, unless a prescription was not dispensed or the prescriber denied authorization. In the case of an error that has no financial harm to the patient or plan, the pharmacy benefits manager may not assess any chargeback. The entity conducting the audit may not use extrapolation in calculating the recoupment or penalties for audits. Any recoupment may not be deducted against future remittances and must be invoiced to the pharmacy for payment. An entity performing an audit may not receive payment based on a percentage of the amount recovered. Interest may not accrue during the audit period, which begins with the notice of audit and ends with the final audit report.

4. A clerical or recordkeeping error may not be considered fraud, but may be subject to recoupment. A person is not subject to any criminal penalty for a clerical or recordkeeping error without proof of intent to commit fraud.

5. The parameters of an audit must comply with consumer-oriented parameters based on manufacturer listings or recommendations for the following:

a. The day supply for eye drops must be calculated so that the consumer pays only one 30-day copayment if the bottle of eye drops is intended by the manufacturer to be a thirty-day supply.

b. The day supply for insulin must be calculated so that the highest dose prescribed is used to determine the day supply and consumer copayment.

c. The day supply for a topical product must be determined by the judgment of the pharmacist based upon the treated area.

6. Unless an alternate price is published in a provider contract and signed by both parties, the usual and customary price charged by a pharmacy for compounded medications is considered to be the reimbursable cost.

7. An entity conducting an audit shall utilize the same standards and parameters in auditing a pharmacy the entity uses with other similarly situated pharmacies.

8. An entity conducting an audit shall establish a written appeals process.

SECTION 3.

Audit reports - Disclosure - Distribution of recouped funds - Review of auditor.

1. A preliminary audit report must be delivered to the pharmacy within one hundred twenty days after the conclusion of the audit.

2. A pharmacy must be allowed at least sixty days following receipt of the preliminary audit to provide documentation to address any discrepancy found in the audit.

3. A final audit report must be delivered to the pharmacy within ninety days after receipt of the preliminary audit report or final appeal, whichever is later.

4. No chargeback, recoupment, or other penalty may be assessed until the appeal process has been exhausted and the final report issued.

5. An entity shall remit any money due to a pharmacy or pharmacist as a result of an underpayment of a claim within thirty days after the appeals process has been exhausted and the final audit report has been issued.

6. An auditing entity shall provide a copy of the final report to the plan sponsor for which claims were included in the audit. Any funds recouped must be returned to the plan sponsor.

SECTION 4.

Applicability.

1. This Act applies to claims adjudicated after July 31, 2011.

2. This Act does not apply to any audit, review, or investigation that is initiated based upon alleged fraud, willful misrepresentation, or abuse, including:

a. Insurance fraud as defined in chapter 26.1-02.1.

b. Billing for services not furnished or supplies not provided.

c. Billing that appears to be a deliberate application for duplicate payment for the same services or supplies, billing both the beneficiary and the pharmacy benefits manager or payer for the same service.

d. Altering claim forms, electronic claim records, or medical documentation to obtain a higher payment amount.

e. Soliciting, offering, or receiving a kickback or bribe.

f. Participating in any scheme that involves collusion between a provider and a beneficiary or between a supplier and a provider which results in higher costs or charges to the entity.

g. Misrepresenting a date or description of services furnished or the identity of the beneficiary or the individual who furnished the services.

h. Billing for a prescription without a prescription on file in a situation in which an over-the-counter item is dispensed.

i. Dispensing a prescription using an out-of-date drug.

j. Billing with an incorrect national drug code or billing for a brand name when a generic drug is dispensed.

k. Failing to credit the payer for a medication or a portion of a prescription that was not obtained by the payer within fourteen days unless extenuating circumstances exist.

l. Billing the payer a higher price than the usual and customary charge of the pharmacy to the general public.

m. Billing for a product without proof that the purchaser purchased the product.

3. Any case of suspected fraud or violation of law must be reported by an auditor to the licensing board.

4. This Act does not apply to state medicaid programs.

SECTION 5.

Penalty.

Any person violating this Act is guilty of a class B misdemeanor.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 167

SENATE BILL NO. 2127

(Senators Lyson, Oehlke, Wardner)
(Representative Onstad)

AN ACT to amend and reenact section 19-10-03.1 of the North Dakota Century Code, relating to ethanol dispensing unit labeling requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-10-03.1 of the North Dakota Century Code is amended and reenacted as follows:

19-10-03.1. Retail sale of alcohol-blended gasoline - Label requirements.

~~No~~A dealer may not sell at retail alcohol-blended gasoline unless the dispensing unit and any price advertising bear the name of the alcohol blended with the gasoline if the alcohol-blended gasoline consists of one percent or more by volume of any alcohol ~~and the dispensing unit bears the ethanol promotion and information council label or logo~~. The disclosure must be in letters at least the same size as those used for the label of the basic grade of gasoline and must be next to the gasoline grade label. A producer of alcohol-blended gasoline may provide a retailer with a label promoting the benefits of alcohol-blended gasoline, if the label at least meets the requirements of this section.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 168

HOUSE BILL NO. 1321

(Representatives Belter, D. Johnson)
(Senators Flakoll, Wanzek)

AN ACT to create and enact chapter 19-20.3 of the North Dakota Century Code, relating to anhydrous ammonia risk management program requirements; to amend and reenact sections 19-20.1-06, 19-20.2-03, 19-20.2-07, 19-20.2-07.1, 19-20.2-08.4, 19-20.2-09, and 19-20.2-11 of the North Dakota Century Code, relating to anhydrous ammonia facility inspections; to repeal section 19-20.2-08.1 of the North Dakota Century Code, relating to the anhydrous ammonia storage facility inspection fund; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[67] **SECTION 1. AMENDMENT.** Section 19-20.1-06 of the North Dakota Century Code is amended and reenacted as follows:

19-20.1-06. Inspection fees and tonnage reports.

There must be paid to the commissioner for all fertilizers, soil amendments, or plant amendments distributed in this state an inspection fee at the rate of twenty cents per ton [907.18 kilograms]. The inspection fee may not be less than ten dollars. Sales to manufacturers or exchanges between them are exempt from the inspection fee. Fees collected under this section must be ~~used for the payment of the costs of inspection, sampling, and analysis, and other expenses necessary for the administration of this chapter~~forwarded to the state treasurer for deposit in the environment and rangeland protection fund.

Individual packages of fertilizers, soil amendments, or plant amendments sold exclusively in packages of twenty-five pounds [11.34 kilograms] or less are exempt from the provisions of this section. If a person sells fertilizer, soil amendments, or plant amendments in packages of twenty-five pounds [11.34 kilograms] or less and in packages over twenty-five pounds [11.34 kilograms], that portion sold in packages over twenty-five pounds [11.34 kilograms] is subject to the same inspection fee of twenty cents per ton [907.18 kilograms], including the minimum ten dollar fee, as provided in this chapter.

Every licensed person who distributes a fertilizer, soil amendment, or plant amendment to a nonlicensed person in this state shall file with the commissioner, on forms furnished by the commissioner, an annual statement for the calendar year, setting forth the number of net tons [kilograms] of each fertilizer, soil amendment, or plant amendment so distributed in this state during the period. A licensed end user shall report all sales and purchases and pay the appropriate tonnage tax. The statement is due on or before January thirty-first of the following year. The person filing the statement shall pay the inspection fee at the rate stated in this section. If the tonnage statement is not filed and the payment of inspection fee is not made by January thirty-first, a collection fee amounting to ten percent, minimum ten dollars, of

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[67] Section 19-20.1-06 was also amended by section 15 of Senate Bill No. 2009, chapter 35.

the amount must be assessed against the licensee, and the amount of fees due constitute a debt and become the basis of a judgment against the licensee.

SECTION 2. AMENDMENT. Section 19-20.2-03 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-03. License required - Anhydrous ammonia facilities constructed after June 30, 1985.

No anhydrous ammonia storage facility may be operated without a license issued by the agriculture commissioner and the board of county commissioners of the county in which the facility is constructed. An application for a license to site and operate an anhydrous ammonia storage facility must be made to the agriculture commissioner and to the board of county commissioners. The commissioner or the board may deny a license for failure to remit the proper fee to the agriculture commissioner, for failure to comply with the siting requirements of this chapter and rules adopted pursuant to this chapter if constructed after June 30, 1985, or for failure to comply with local siting requirements. The agriculture commissioner also may deny a license if the ~~chief boiler inspector does not certify that the~~ facility ~~meets~~does not meet the initial inspection standards required by this chapter and by any rules adopted pursuant to this chapter. In order to obtain a license, an individual shall submit two sets of drawings or photographs and signed affidavits stating and showing the facility has been measured and meets the siting requirements along with the application for license. The drawings or photographs must show the proposed location of the tank, the locations, and the surroundings in all directions. One set of drawings or photographs is for the agriculture commissioner and the other is for the board of county commissioners.

SECTION 3. AMENDMENT. Section 19-20.2-07 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-07. Inspection.

1. The ~~chief boiler inspector and the insurance commissioner shall cooperate with the~~ agriculture commissioner ~~to~~shall develop and implement an initial and periodic inspection program for anhydrous ammonia storage facilities. ~~The chief boiler inspector shall inform the agriculture commissioner of any violation of this chapter that may arise in the course of an inspection of an anhydrous ammonia storage facility.~~

2. The ~~insurance~~agriculture commissioner shall inspect each anhydrous ammonia storage facility at least once every five years and may inspect any farm transportation wagon or vehicle designed to apply anhydrous ammonia which is in the vicinity of an anhydrous ammonia storage facility.

3. The ~~insurance~~agriculture commissioner may inspect any anhydrous ammonia storage facility where the commissioner has reason to believe violations of the safety standards under this chapter exist.

4. The agriculture commissioner may revoke or suspend the license of any anhydrous ammonia storage facility violating this chapter or the rules adopted under this chapter. The commissioner may order the discontinuance of use of any farm transportation wagon or implement of husbandry which is found unsafe or hazardous.

SECTION 4. AMENDMENT. Section 19-20.2-07.1 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-07.1. Reinstalled and secondhand anhydrous ammonia storage containers - Requirement.

1. Before anhydrous ammonia may be stored in a reinstalled or secondhand container, including a nurse tank, the person intending to store the anhydrous ammonia shall furnish the ~~chief boiler inspector~~agriculture commissioner with:

   a. Evidence that the container is registered with the national board of boiler and pressure vessel inspectors; or

   b. The manufacturer's data report for the container.

2. Subsection 1 is not applicable to the owner of an anhydrous ammonia storage container installed in this state before November 1, 1987, unless the storage container is reinstalled at another location.

SECTION 5. AMENDMENT. Section 19-20.2-08.4 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-08.4. Hydrostatic test procedures.

Any hydrostatic test conducted under section 19-20.2-05 must comply with the requirements of the national board inspection code (ANSI-NB 23) and be conducted in a manner approved by the ~~chief boiler inspector~~agriculture commissioner.

SECTION 6. AMENDMENT. Section 19-20.2-09 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-09. Enforcement.

1. The agriculture commissioner shall enforce the requirements of this chapter and any rules issued under it.

2. The commissioner may bring an action to enjoin the violation or threatened violation of this chapter, or any rule issued pursuant to this chapter, in the district court of the county in which the violation occurs or is about to occur.

3. The agriculture commissioner may issue a cease and desist order to any person allegedly violating this chapter. If any person violates the cease and desist order, the commissioner shall file the appropriate criminal complaint.

4. For the purpose of carrying out this chapter, the agriculture commissioner ~~and the insurance commissioner~~ may enter upon any public or private premises at reasonable times to:

   a. Inspect any equipment subject to this chapter and the premises on which the equipment is stored or used.

   b. Inspect or investigate complaints.

   c. Inspect any premises or other place where anhydrous ammonia or devices are held for distribution, sale, or use.

5. If a civil penalty pursuant to section 19-20.2-10 is imposed by the agriculture commissioner through an administrative hearing and the civil penalty is not paid, the commissioner may collect the civil penalty by a civil action in any appropriate court. Additionally, the commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made.

SECTION 7. AMENDMENT. Section 19-20.2-11 of the North Dakota Century Code is amended and reenacted as follows:

19-20.2-11. Rules relating to security measures for nurse tanks.

The ~~insurance~~agriculture commissioner shall adopt rules identifying a critical methamphetamine use zone in the state and establishing appropriate security measures to be implemented by the owners and users of anhydrous ammonia nurse tanks located within the zone as a pilot project. The ~~insurance~~agriculture commissioner may establish the duration of the pilot project, and may require the locking of anhydrous ammonia nurse tanks or other security measures as are deemed necessary to curb the illegal theft of anhydrous ammonia within the zone. The ~~insurance~~agriculture commissioner shall enforce any rules adopted pursuant to this section.

SECTION 8. Chapter 19-20.3 of the North Dakota Century Code is created and enacted as follows:

19-20.3-01. Risk management program - Anhydrous ammonia.

In order to determine compliance with the risk management program requirements set forth in section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011, the agriculture commissioner may:

1. Request information from any person that:

   a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and

   b. Is required to comply with the risk management program requirements;

2. Conduct inspections of any person that:

   a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and

   b. Is required to comply with the risk management program requirements; and

3. Obtain and review risk management plans required under 40 Code of Federal Regulations, part 68, as amended through June 30, 2011, and other records applicable to any person that:

   a. Sells, stores, or handles anhydrous ammonia for agricultural purposes; and

   b. Is required to comply with the risk management program requirements.

19-20.3-02. Risk management program - Enforcement authority.

If the agriculture commissioner determines that there is noncompliance on the part of any person that sells, stores, or handles anhydrous ammonia for agricultural purposes and that is required to comply with the risk management program requirements referenced in section 19-20.3-01, the agriculture commissioner may:

1. Bring an action to enjoin a violation or a threatened violation;

2. Issue a cease and desist order; and

3. Impose a civil penalty through an administrative hearing in an amount not exceeding ten thousand dollars per day for each violation.

SECTION 9. REPEAL. Section 19-20.2-08.1 of the North Dakota Century Code is repealed.

SECTION 10. CONTINGENT EFFECTIVE DATE. Section 8 of this Act becomes effective on the date that the governor certifies to the legislative council that the agriculture commissioner has been delegated by the administrator of the environmental protection agency to implement and enforce the risk management program as it pertains to the sale, storage, and handling of anhydrous ammonia for agricultural purposes, in accordance with section 112 of the Clean Air Act of 1990 [42 U.S.C. 7401 et seq.], as amended through June 30, 2011.

SECTION 11. EFFECTIVE DATE. Sections 1 and 9 of this Act become effective on July 1, 2011. Sections 2 through 7 of this Act become effective on January 1, 2012.

SECTION 12. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 18, 2011
Filed April 18, 2011