19.0374.04000

Sixty-sixth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1155

Introduced by

Representatives Roers Jones, Beadle, Becker, Blum, Boschee, Vetter

Senators Oban, J. Roers

A BILL for an Act to create and enact section 19-03.4-01.1 of the North Dakota Century Code, relating to marijuana paraphernalia; to amend and reenact sections 19-03.1-22.3, 19-03.1-23, 19-03.1-23.1, 19-03.4-03, 19-03.4-04, 19-03.4-05, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to possession of marijuana and marijuana paraphernalia; to provide for a legislative management study; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-03.1-22.3 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.

A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance, unless the substance was obtained directly from a practitioner or pursuant to a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, is guilty of ~~a class B misdemeanor if the controlled substance is marijuana. Otherwise, the offense is~~ a class A misdemeanor. The venue for a violation of this section exists in either the jurisdiction in which the controlled substance was ingested, inhaled, injected, or otherwise taken into the body or the jurisdiction in which the controlled substance was detected in the body of the accused. This section does not apply to the ingestion of marijuana.

SECTION 2. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts A - Mandatory terms of imprisonment and fines - Unclassified offenses - Penalties.

1. Except as authorized by this chapter, it is unlawful for a 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 a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A 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 B felony and 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.

b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog is guilty of a class B 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 two years.
   (2) For a third or subsequent offense, to imprisonment for five 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 three months.
   (2) For a third offense, to imprisonment for at least six months.
   (3) For a fourth or subsequent offense, to imprisonment for three years.

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

e. The manufacture, delivery, or possession with intent to manufacture or deliver marijuana is guilty of a noncriminal offense punishable by a fee of two hundred dollars; however the person is guilty of a class A misdemeanor if:
   (1) The person knows or should reasonably know the recipient lacks mental capacity as a result of mental disease or defect;
   (2) The recipient is under twenty-one years of age; or
   (3) The delivery is by concealment, deception, or misrepresentation.

2. A prior misdemeanor conviction under subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsections 1 and 4.

3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, 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 counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
   b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
   c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4. a. For second or subsequent offenses, in addition to any other penalty imposed under this section, if the person who violates this chapter was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the person is subject to, and the court shall impose a term of imprisonment of at least four years.
   b. Which is to run consecutively to any other sentence imposed. It is not a defense that the defendant did not know the age of a person protected under subdivision a.
   c. The penalty in subdivision a does not apply to a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana.
5. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
   a. For a second or subsequent offense, to imprisonment for at least three years.
   b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.

6. Except for a prior conviction equivalent to a misdemeanor violation of subsection 8 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 4, and 5. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.

7. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
   a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
   b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

   A person who violates this subsection is guilty of a class C felony.

8. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
   b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection. <u>This subdivision does not apply to a marijuana-related offense.</u>
   c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical

education school, the person is guilty of a class B felony, unless the offense involves marijuana.

d. As used in this subdivision, the term "marijuana plant" means a plant of the genus cannabis, whether growing or harvested. A person who violates this subsection ~~regarding possession of~~by possessing:

(1) One ounce [28.35 grams] or less of marijuana is guilty of a ~~class B misdemeanor~~noncriminal offense punishable by a fee of two hundred dollars.

(2) More than one ounce [28.35 grams] and less than one pound [453.59 grams] of marijuana is guilty of a class B misdemeanor.

(3) One pound [453.59 grams] or more but less than five pounds [2267.96 grams] of marijuana is guilty of a class A misdemeanor.

(4) Five pounds [2267.96 grams] or more of marijuana is guilty of a class C felony.

(5) Two marijuana plants or fewer is guilty of a noncriminal offense punishable by a fee of two hundred dollars.

(6) More than two marijuana plants but fewer than twenty-one marijuana plants is guilty of a class B misdemeanor.

(7) Twenty-one or more marijuana plants is guilty of a class C felony.

e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.

f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.

g. Probation under this subsection may include placement in another facility, treatment program, or drug court. If an individual is placed in another facility or

treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.

i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.

9. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation. A court shall order a person who violates subdivision e of subsection 8 to undergo the drug addiction evaluation.

10. If a person pleads guilty or is found guilty of a first offense regarding possession of more than one ounce [28.35 grams] ~~or less~~ of marijuana and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.

11. Notwithstanding any other provision of law, a prior marijuana-related offense under this section may not serve as a prior offense for increased penalties under this chapter.

SECTION 3. 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 was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense involved the manufacture, delivery, or possession, with intent to manufacture or

deliver a controlled substance in, on, or within three hundred feet [91.4 meters] of the real property comprising a preschool facility, a public or private elementary or secondary school, or a public career and technical education school, the defendant was at least twenty-one years of age at the time of the offense, and the offense involved the delivery of a controlled substance to a minor;

b. 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) Twenty-eight 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, C11H15NO2;

(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; or

(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~~

c. The defendant had a firearm in the defendant's actual possession at the time of the offense.

2. The offense is:

a. A class A felony if the violation of section 19-03.1-23 is designated as a class B felony.

b. A class B felony if the violation of section 19-03.1-23 is designated as a class C felony.

c. A class C felony if the violation of section 19-03.1-23 is designated as a class A misdemeanor.

SECTION 4. Section 19-03.4-01.1 of the North Dakota Century Code is created and enacted as follows:

19-03.4-01.1. Definition - Marijuana paraphernalia.

As used in this chapter, "marijuana paraphernalia" means any equipment, product, or material of any kind used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, ingesting, inhaling, or otherwise introducing marijuana or tetrahydrocannabinols, as defined in section 19-03.1-05, into the human body.

SECTION 5. AMENDMENT. Section 19-03.4-03 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.

1. A person may not use or possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of chapter 19-03.1. Any person violating this subsection is guilty of a class C felony if the drug paraphernalia is used, or possessed with intent to be used, to manufacture, compound, convert, produce, process, prepare, test, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1.
2. A person may not use or possess with the intent to use drug paraphernalia to inject, ingest, inhale, or otherwise induce into the human body a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating this subsection is guilty of a class A misdemeanor. If a person previously has been convicted of an offense under this title, other than an offense related to marijuana, or an equivalent offense from another court in the United States, a violation of this subsection is a class C felony.
3. A person ~~may not use or possess~~who uses or possesses with intent to use ~~drug~~ marijuana paraphernalia ~~to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana~~ in violation of chapter 19-03.1~~. A person violating this subsection~~ is guilty of a ~~class A misdemeanor~~noncriminal offense punishable by a fee of one hundred dollars.
4. ~~A person may not use or possess with the intent to use drug paraphernalia to ingest, inhale, or otherwise introduce into the human body marijuana in violation of chapter 19-03.1. A person violating this subsection is guilty of a class B misdemeanor~~Notwithstanding any other provision of law, a prior marijuana-related offense under this section may not serve as a prior offense for increased penalties under this chapter.

SECTION 6. AMENDMENT. Section 19-03.4-04 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-04. Unlawful manufacture or delivery of drug paraphernalia - Penalty.

1. A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, if that person knows or should reasonably know that the drug paraphernalia will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of chapter 19-03.1. Any person violating this ~~section~~subsection is guilty of a class C felony if the drug paraphernalia will be used to manufacture, compound, convert, produce, process, prepare, test, inject, ingest, inhale, or analyze a controlled substance, other than marijuana, classified in schedule I, II, or III of chapter 19-03.1. ~~Otherwise, a~~
2. A person may not deliver, possess with intent to deliver, or manufacture with intent to deliver, marijuana paraphernalia. A violation of this ~~section~~subsection is a ~~class A misdemeanor~~noncriminal offense punishable by a fee of one hundred dollars.

SECTION 7. AMENDMENT. Section 19-03.4-05 of the North Dakota Century Code is amended and reenacted as follows:

19-03.4-05. Unlawful delivery of drug paraphernalia to a minor - Penalty.

1. A person eighteen years of age or over may not deliver drug paraphernalia, in violation of this chapter, to a person under eighteen years of age who is at least three years ~~the deliverer's junior~~younger than the deliverer. Any person violating this ~~section~~subsection is guilty of a class C felony.
2. Notwithstanding subsection 1, a person eighteen years of age or older may not deliver marijuana paraphernalia to a person under eighteen years of age who is at least three years younger than the deliverer. A person who violates this subsection is guilty of a class B misdemeanor.

SECTION 8. AMENDMENT. Subsection 29 of section 40-05-02 of the North Dakota Century Code are amended and reenacted as follows:

29. Marijuana possession. To prohibit by ordinance any person, except a person operating a motor vehicle, from possessing ~~not~~ more than one ounce [28.35 grams] of marijuana, as defined by section 19-03.1-01, within the jurisdiction of a city, and to prescribe the punishment, provided the penalty assessed is subject to subsection 10

of section 19-03.1-23 and does not exceed the penalties for equivalent categories in chapter 19-03.1.

SECTION 9. LEGISLATIVE MANAGEMENT STUDY. During the 2019-20 interim, the legislative management shall consider studying the legalization of marijuana, specifically relating to the regulation, commercial controls, and tax implications associated with legalization. The legislative management also shall consider studying the age at which individuals should be allowed to drink alcohol. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-seventh legislative assembly.