

Sixty-eighth
Legislative Assembly
of North Dakota

REENGROSSED SENATE BILL NO. 2248

Introduced by

Senators Hogue, Larson, Luick

Representatives Klemin, Louser

1 A BILL for an Act to create and enact ~~a new section to chapter 19-03.1, section 19-03.1-23.6,~~
2 ~~and a new section to chapter 50-06~~ of the North Dakota Century Code, relating to ~~a special~~
3 ~~penalty for death or injury through distribution of illegal drugs, fentanyl reporting, and an opioid~~
4 ~~settlement fund; to amend and reenact subdivision d of subsection 1 of section 19-03.1-23.1 of~~
5 ~~the North Dakota Century Code, relating to the increased penalty for delivering or selling a~~
6 ~~controlled substance resulting in a substantial injury or death; and to provide a penalty; and to~~
7 ~~provide an appropriation.~~

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

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

11 ~~**Distribution of illegal drugs - Special penalty for death or injury.**~~

12 ~~1. As used in this section:~~

13 ~~a. "Consume" means to inject, ingest, or inhale a controlled substance.~~

14 ~~b. "Controlled substance" includes derivatives or analogs to a scheduled controlled~~
15 ~~substance.~~

16 ~~c. "Injury" means an overdose that puts an individual's life at immediate risk.~~

17 ~~d. "Supplies" includes delivering, supplying, directing, or willfully assisting another to~~
18 ~~supply or deliver a controlled substance.~~

19 ~~2. An individual is guilty of causing death or injury by distributing a controlled substance if~~
20 ~~the individual willfully supplies another to deliver a controlled substance to an~~
21 ~~individual who consumes the controlled substance and that individual dies or is injured~~
22 ~~from overdosing after consuming a portion of the controlled substance.~~

23 ~~a. A violation of this section is a class A felony.~~

1 ~~b. This section does not limit a conviction under chapter 12.1-16, but an individual~~
2 ~~may not be found guilty of this section and an offense under chapter 12.1-16 if~~
3 ~~the conduct arises out of the same course of conduct.~~

4 ~~3. Venue for an offense under this section is in the county where the death or injury~~
5 ~~occurred or any county where the controlled substance was directly or~~
6 ~~indirectly obtained by the deceased or injured individual.~~

7 ~~a. An individual may not be convicted in more than one county for the death or~~
8 ~~injury of the same individual who overdosed on a controlled substance.~~

9 ~~b. Notwithstanding chapter 29-03, an individual outside the state may be~~
10 ~~prosecuted within the state under this section.~~

11 ~~c. The charging document for a violation of this section must list an overt act in~~
12 ~~which the individual engaged to violate this section.~~

13 ~~d. Injury or death by an overdose may be proven by direct or circumstantial~~
14 ~~evidence.~~

15 ~~4. An individual may not be charged under this section if the individual supplied or~~
16 ~~administered a controlled substance as part of a medical procedure or the individual~~
17 ~~was in a lawful position to dispense a medication prescription.~~

18 ~~a. An individual may not be charged under this section if the individual complied~~
19 ~~with section 19-3.1-23.4.~~

20 ~~b. It is not a defense to this section that the deceased or injured individual~~
21 ~~had other controlled substances or alcohol in the individual's system which the~~
22 ~~defendant did not supply at the time of an overdose.~~

23 **SECTION 1. AMENDMENT.** Subdivision d of subsection 1 of section 19-03.1-23.1 of the
24 North Dakota Century Code is amended and reenacted as follows:

25 d. The defendant sells, distributes, delivers, or conspires to deliver a controlled
26 substance to an individual which results in ~~the~~substantial injury or death of the
27 individual due to the use of that controlled substance and the substantial injury or
28 ~~death of the individual~~ would not have occurred in the absence of the defendant's
29 conduct. This subdivision does not apply to an individual who is immune from
30 prosecution under section 19-03.1-23.4.

- 1 (1) Venue for an offense under this subdivision is in the county where the death
2 or substantial injury occurred or any county where the controlled substance
3 was directly or indirectly obtained by the deceased or injured individual.
4 (a) An individual may not be convicted in more than one county for the
5 death or substantial injury of the same individual who overdosed on a
6 controlled substance.
7 (b) Notwithstanding chapter 29-03, an individual outside the state may be
8 prosecuted within the state under this subdivision.
9 (c) The charging document for a violation of this subdivision must list an
10 overt act in which the individual engaged to violate this subdivision.
11 (d) Substantial injury or death by an overdose may be proven by direct or
12 circumstantial evidence.
13 (2) As used in this subdivision:
14 (a) "Results" means the substantial injury or death would not have
15 occurred but for the conduct of the defendant operating either alone or
16 concurrently with another cause, unless the concurrent cause was
17 clearly sufficient to produce the result and the conduct of the
18 defendant clearly insufficient.
19 (b) "Substantial injury" means an overdose that puts an individual's life at
20 immediate risk of death.

21 **SECTION 2.** Section 19-03.1-23.6 of the North Dakota Century Code is created and
22 enacted as follows:

23 **19-03.1-23.6. Fentanyl reporting - Report to legislative management - Fentanyl**
24 **awareness campaign.**

25 1. As used in this section:

- 26 ~~a. "Health care provider" means a person licensed or certified by the state to~~
27 ~~provide health care services. The term includes emergency service personnel, a~~
28 ~~medical hospital, and a medical clinic.~~
29 ~~b. "Law enforcement agency" means a nonfederal public agency authorized by law~~
30 ~~or by a government agency or branch to enforce the law and to conduct or~~

- 1 ~~engage in investigations or prosecutions for violations of law. The term includes a~~
2 ~~multijurisdictional task force.~~
- 3 ~~2. Annually, a law enforcement agency and a health care provider shall provide to the~~
4 ~~attorney general a completed case report form for every death the agency or the~~
5 ~~provider encounters which is caused by, suspected to have been caused by, or is~~
6 ~~related to fentanyl consumption.~~
- 7 ~~a. The data and report compiled under this section are open records.~~
- 8 ~~b. The attorney general may require the reporting of additional information not~~
9 ~~specified in this section. The attorney general shall develop standard forms,~~
10 ~~processes, and deadlines for annual submission of fentanyl data by law~~
11 ~~enforcement agencies and health care providers.~~
- 12 ~~c. If a law enforcement agency or health care provider fails to file a report within~~
13 ~~thirty days after the report is due, the attorney general may compel compliance~~
14 ~~by any means until the report is filed.~~
- 15 ~~d. By November first of each year, the attorney general department of health and~~
16 ~~human services shall submit to the legislative management and the governor a~~
17 ~~written report summarizing the number of deaths that occurred in the state~~
18 ~~caused by or related to fentanyl consumption during the preceding calendar year,~~
19 ~~including the county in which the deaths occurred and the age and gender of the~~
20 ~~deceased individuals. The attorney general shall make the report available on the~~
21 ~~attorney general's website.~~
- 22 2. The department of health and human services shall make the data reported under
23 subsection 1 available to the public by:
- 24 a. Making the information easily accessible on the department's government
25 website;
- 26 b. Publishing easily comprehensible printed materials on fentanyl awareness,
27 information, and resources;
- 28 c. Placing visible billboards in high-traffic areas to inform the public of the dangers
29 of fentanyl; and

1 d. Developing a media and social media campaign to expand statewide awareness
2 of fentanyl drug deaths and the fentanyl overdose epidemic occurring within the
3 state.

4 ~~—SECTION 3. A new section to chapter 50-06 of the North Dakota Century Code is created~~
5 ~~and enacted as follows:~~

6 ~~—**Opioid settlement fund.**~~

7 ~~—There is created in the state treasury an opioid settlement fund. The fund consists of opioid~~
8 ~~litigation funds received by the state. Moneys received by the state as a result of opioid litigation~~
9 ~~must be deposited in the fund. Moneys in the fund may be used as authorized by legislative~~
10 ~~appropriation. The legislative assembly shall consult with the governor in determining the use of~~
11 ~~the moneys in the fund. As used in this section, "opioid litigation" means civil litigation, demand,~~
12 ~~or settlement in lieu of litigation alleging unlawful conduct related to the marketing, sale, or~~
13 ~~distribution of opioids in this state or other alleged illegal actions that contributed to the~~
14 ~~excessive use of opioids.~~

15 **SECTION 3. APPROPRIATION—DEPARTMENT OF HEALTH AND HUMAN SERVICES -**
16 **FENTANYL AWARENESS EXPANSION.** ~~There is appropriated out of any moneys from the~~
17 ~~opioid settlement fund, not otherwise appropriated, the sum of \$1,500,000, or so much of the~~
18 ~~sum as may be necessary, to the department of health and human services for the purpose of~~
19 ~~providing and expanding statewide awareness of the fentanyl drug and overdose epidemic, for~~
20 ~~the biennium beginning July 1, 2023, and ending June 30, 2025~~Best practices relating to
21 fentanyl drug overdose by the department of health and human services as provided in-
22 section 3 of House Bill No. 1447, as approved by the sixty-eighth legislative assembly, includes
23 providing and expanding statewide awareness of fentanyl drug deaths and the fentanyl
24 overdose epidemic, communication strategies and campaigns, access to Naloxone, and other
25 strategies as provided under section 2 of this Act, for the biennium beginning July 1, 2023, and
26 ending June 30, 2025.