25.1431.01000

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2408

Introduced by

Senator Axtman

A BILL for an Act to create and enact subdivision lll of subsection 3 of section 19-03.1-05 of the North Dakota Century Code, relating to the scheduling of mitragynine synthetic derivatives as a schedule I controlled substance; to amend and reenact section 19-03.1-22.3 and subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to penalties for the use and possession of mitragynine synthetic derivatives; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subdivision lll of subsection 3 of section 19-03.1-05 the North Dakota Century Code is created and enacted as follows:

lll. Mitragynine synthetic derivatives. Unless specifically excepted or listed in another schedule, any of the following mitragynine synthetic derivatives, its isomers, esters, ethers, salts, and salts of isomers:

(1) Methyl (E)2-((2S,3S,7aS)-3-ethyl-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12b-octahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as 7-hydroxymitragynine; also known as (alphaE,2S,3S,7aS,12bS)-3-ethyl-1,2,3,4,6,7,7a,12b-octahydro-7a-hydroxy-8-methoxy-a-(methoxymethylene)-indolo[2,3-a]quinolizine-2-acetic acid, methyl ester) above a specified threshold described as:

(a) Any botanical material of the plant mitragyna speciosa, also known as kratom, and contains more than 0.05 percentage of 7-hydroxymitragynine on a dry weight basis; or

(b) Any alternative article or material to that described in subparagraph a, that is:

[1] Resulting from synthetic methods and containing 7-hydroxymitragynine present in amounts greater than 0.05 percentage weight/weight, weight/volume, or volume/volume or greater than 1 milligram of 7-hydroxymitragynine in the article; or

[2] Material derived from mitragyna speciosa and further processed to manufacture alternative dosage forms such as extracts, concentrates, processed edibles, or pressed pills, and which may have materials that have been exposed to chemical, thermal, or other methods leading to chemical transformations that result in 7-hydroxymitragynine present in amounts greater than 0.05 percentage weight/weight, weight/volume, or volume/volume or greater than 1 milligram of 7-hydroxymitragynine in the article.

(2) Methyl (E)-2-((1'S,6'S,7'S)-6'-ethyl-4-methoxy-3-oxo-3',5',6',7',8',8a'-hexahydro-2'H-spiro[indoline-2,1'-indolizine]-7'-yl)-3-methoxyacrylate (also known as mitragynine pseudoindoxyl).

(3) Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as MGM-15; also known as dihydro-7-hydroxymitragynine).

(4) Methyl (E)-2-((2S,3S,7aS,12aR,12bS)-3-ethyl-9-fluoro-7a-hydroxy-8-methoxy-1,2,3,4,6,7,7a,12,12a,12b-decahydroindolo[2,3-a]quinolizin-2-yl)-3-methoxyacrylate (also known as MGM-16; also known as fluoro-dihydro-7-hydroxymitragynine; also known as 9-fluoro derivate of dihydro-7-hydroxymitragynine; also known as the 10-fluoro derivate of dihydro-7-hydroxymitragynine).

(5) Methyl (E)-2-[(2S,3S,7aS,12bS)-7a-acetyloxy-3-ethyl-8-methoxy-2,3,4,6,7,12b-hexahydro-1H-indolo[2,3-a]quinolizin-2-yl]-3-methoxyprop-2-enoate (also known as 7-acetoxymitragynine).

SECTION 2. 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.

1. Except as provided in ~~subsection~~subsections 2 and 3, 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 A misdemeanor. This subsection does not apply to ingesting, inhaling, injecting, or otherwise taking into the body marijuana or tetrahydrocannabinol.
2. A person who is under twenty-one years of age and intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is marijuana or tetrahydrocannabinol, unless the substance was medical marijuana obtained in accordance with chapter 19-24.1, is guilty of a class B misdemeanor.
3. A person who intentionally ingests, inhales, injects, or otherwise takes into the body a controlled substance that is a mitragynine synthetic derivative is guilty of an infraction for a first offense and a class A misdemeanor for a second or subsequent offense.
4. 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.

SECTION 3. AMENDMENT. Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. 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. If a person is convicted of a second or subsequent offense not related to marijuana ~~or~~, tetrahydrocannabinol, or a mitragynine synthetic derivative under this section or

chapter 19-03.2, 19-03.3, or 19-03.4, or an equivalent offense from another court in the United States, the violation is a class C felony.

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 ~~or~~, tetrahydrocannabinol, or a mitragynine synthetic derivative.

d. A person who violates this subsection by possessing:

(1) Marijuana:

(a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.

(b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.

(c) More than 500 grams of marijuana is guilty of a class A misdemeanor.

(2) Tetrahydrocannabinol:

(a) In an amount less than two grams is guilty of an infraction.

(b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.

(c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.

e. A person who violates this subsection by possessing a mitragynine synthetic derivative is guilty of an infraction for a first offense, a class A misdemeanor for a second offense, or a class C felony for a third or subsequent offense.

f. 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.~~g. 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.~~h. Probation under this subsection may include placement in another facility, treatment program, treatment court, mental health court, or veterans treatment docket. 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.~~i. 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.~~j. 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. If a person is convicted of a second or subsequent offense not related to marijuana or tetrahydrocannabinol under this section or chapter 19-03.2, 19-03.3, or 19-03.4, or an equivalent offense from another court in the United States, the violation is a class C felony.

SECTION 4. EFFECTIVE DATE. This Act becomes effective upon its filing with the secretary of state.