FOODS, DRUGS, OILS, AND COMPOUNDS

CHAPTER 207

SENATE BILL NO. 2319

(Senators Grindberg, Lyson, Nelson)
(Representatives DeKrey, Delmore, Thoreson)

SCHEDULED LISTED CHEMICAL PRODUCTS DEFINITIONS AND SALE

AN ACT to amend and reenact sections 19-03.1-01 and 19-03.4-08 of the North Dakota Century Code, relating to definitions and the sale of scheduled listed chemical products; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

   a. A practitioner or, in the practitioner's presence, by the practitioner's authorized agent; or

   b. The patient or research subject at the direction and in the presence of the practitioner.

2. "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

3. "Anabolic steroids" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids.

4. "Board" means the state board of pharmacy.

5. "Bureau" means the drug enforcement administration in the United States department of justice or its successor agency.

6. "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V as set out in this chapter.

7. "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

8. "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance whether or not there is an agency relationship.

9. "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

10. "Dispenser" means a practitioner who dispenses.

11. "Distribute" means to deliver other than by administering or dispensing a controlled substance.

12. "Distributor" means a person who distributes.

13. "Drug" means:

    a. Substances recognized as drugs in the official United States pharmacopeia, national formulary, or the official homeopathic pharmacopeia of the United States, or any supplement to any of them;

    b. Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals;

    c. Substances, other than food, intended to affect the structure or any function of the body of individuals or animals; and

    d. Substances intended for use as a component of any article specified in subdivision a, b, or c. The term does not include devices or their components, parts, or accessories.

14. "Hashish" means the resin extracted from any part of the plant cannabis with or without its adhering plant parts, whether growing or not, and every compound, manufacture, salt, derivative, mixture, or preparation of the resin.

15. "Immediate precursor" means a substance:

    a. That the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use in the manufacture of a controlled substance;

    b. That is an immediate chemical intermediary used or likely to be used in the manufacture of the controlled substance; and

    c. The control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

16. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation or compounding of a controlled substance by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a controlled substance:

    a. By a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

    b. By a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

17. "Marijuana" means all parts of the plant cannabis whether growing or not; the seeds thereof; the resinous product of the combustion of the plant cannabis; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of mature stalks, fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

18. ~~"Methamphetamine precursor drug" means a drug or product containing ephedrine, pseudoephedrine, or any of their salts, optical isomers, or salts of optical isomers.~~

~~19.~~ "Narcotic drug" means any of the following, 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.

    b. Any salt, compound, isomer, 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, any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

~~20.~~ 19. "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term does not include, unless specifically designated as controlled under section 19-03.1-02, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes its racemic and levorotatory forms.

~~21.~~ 20. "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

~~22.~~ 21. "Over-the-counter sale" means a retail sale of a drug or product other than a controlled, or imitation controlled, substance.

~~23.~~ 22. "Person" means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

~~24.~~ 23. "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~25.~~ 24. "Practitioner" means:

a. A physician, dentist, veterinarian, pharmacist, scientific investigator, or other person licensed, registered, or otherwise permitted by the jurisdiction in which the individual is practicing to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research.

b. A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state.

~~26.~~ 25. "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

~~27.~~ 26. "Sale" includes barter, exchange, or gift, or offer therefor, and each such transaction made by a person, whether as principal, proprietor, agent, servant, or employee.

27. "Scheduled listed chemical product" means a product that contains ephedrine, pseudoephedrin, or phenylpropanolamine, or each of the salts, optical isomers, and salts of optical isomers of each chemical, and that may be marketed or distributed in the United States under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] as a nonprescription drug unless prescribed by a licensed physician.

28. "State" when applied to a part of the United States includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

29. "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the

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

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

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

1. The retail sale of ~~methamphetamine precursor drugs~~ scheduled listed chemical products is limited to:

   a. Sales in packages containing not more than a total of two grams of one or more ~~methamphetamine precursor drugs~~ scheduled listed chemical products, calculated in terms of ephedrine ~~HCl and~~ base, pseudoephedrine ~~HCl~~ base, and phenylpropanolamine base; and

   b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.

2. A person may not ~~deliver~~:

   a. Deliver in a single over-the-counter sale more than two packages of a ~~methamphetamine precursor drug~~ scheduled listed chemical product or a combination of ~~methamphetamine precursor drugs~~ scheduled listed chemical products; or

   b. Without regard to the number of over-the-counter sales, deliver more than a daily amount of three and six-tenths grams of scheduled listed chemical products, calculated in terms of ephedrine base, pseudoephedrine base, and phenylpropanolamine base, to a purchaser.

3. When offering scheduled listed chemical products for sale, the person shall place the products behind a counter or other barrier, or in a locked cabinet, where purchasers do not have direct access to the products before the sale is made.

~~3.~~ 4. a. When offering ~~a methamphetamine precursor drug~~ 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 ~~methamphetamine precursor drug~~ scheduled listed chemical product, the identification being a document issued by a government agency as described in subdivisions a and b of subsection ~~5~~ 6, and shall ~~do at least one of the following:~~

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

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

~~(3) Display only one package of any brand or type of a methamphetamine precursor drug for purchase in an area accessible to the public~~ 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, 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 his or her 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.

~~b.~~ c. The person shall maintain the record of identification required by this subsection 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.

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

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

a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and

b. Includes a passport, military identification card, or driver's license.

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

a. The person making the sale required and obtained proof of age from the purchaser;

b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;

c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and

d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.

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

9. A person may not:

a. Make a false statement or misrepresentation in the written list of sale that is prepared and maintained as required by subsection 4; or

b. Purchase more than nine grams of ephedrine base, pseudoephedrine base, or phenylpropanolamine base in scheduled listed chemical products in a thirty-day period.

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

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

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

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

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

~~10.~~ 12. A political subdivision, including a home rule city or county, may not enact any ordinance relating to the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, or phenylpropanolamine. Any existing ordinance is void.

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

1. The retail sale of nonliquid methamphetamine precursor drugs is limited to:

   a. Sales in packages containing not more than a total of three grams of one or more methamphetamine precursor drugs, calculated in terms of ephedrine HCl and pseudoephedrine HCl; and

   b. Sales in blister packs, each blister containing not more than two dosage units, or when the use of blister packs is technically infeasible, sales in unit dose packets or pouches.

2. A person may not deliver in a single over-the-counter sale more than two packages of a methamphetamine precursor drug or a combination of methamphetamine precursor drugs.

3. A person may not deliver in an over-the-counter sale a methamphetamine precursor drug to a person under the age of eighteen years.

4. It is a prima facie case of a violation of subsection 3 if the person making the sale did not require and obtain proof of age from the purchaser, unless from the purchaser's outward appearance the person would reasonably presume the purchaser to be twenty-five years of age or older. "Proof of age" means a document issued by a governmental agency which:

   a. Contains a description of the person or a photograph of the person, or both, and gives the person's date of birth; and

   b. Includes a passport, military identification card, or driver's license.

5. It is an affirmative defense to a violation of subsection 3 if:

   a. The person making the sale required and obtained proof of age from the purchaser;

   b. The purchaser falsely represented the purchaser's proof of age by use of a false, forged, or altered document;

   c. The appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be at least eighteen years of age; and

   d. The sale was made in good faith and in reliance upon the appearance and representation of proof of age of the purchaser.

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

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

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

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

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

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

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

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

Approved April 20, 2007
Filed April 24, 2007

CHAPTER 208

HOUSE BILL NO. 1055

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

CONTROLLED SUBSTANCES SCHEDULE AND THEFT REPORTS

AN ACT to create and enact section 19-03.1-20.1 of the North Dakota Century Code, relating to theft or loss of controlled substances reports; to amend and reenact subsections 5 and 7 of section 19-03.1-05, subsections 4, 6, and 7 of section 19-03.1-07, section 19-03.1-09, subsections 4 and 6 of section 19-03.1-11, and sections 19-03.1-13 and 19-03.1-22 of the North Dakota Century Code, relating to controlled substances; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[124] **SECTION 1. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-05 of the North Dakota Century Code are amended and reenacted as follows:

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).

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

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

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

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[124] Section 19-03.1-05 was also amended by section 1 of Senate Bill No. 2317, chapter 209.

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

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

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

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

~~i.~~ k. 3,4-methylenedioxy amphetamine.

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

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

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

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

~~n.~~ p. 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. 5-methoxy-N,N-diisopropyltryptamine.

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

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

~~q.~~ t. Hashish.

~~r.~~ u. 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).

~~s.~~ v. Lysergic acid diethylamide.

~~t.~~ w. Marijuana.

~~u.~~ x. Mescaline.

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

~~w.~~ z. 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).

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

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

~~z.~~ cc. Psilocybin.

~~aa.~~ dd. Psilocyn.

~~bb.~~ ee. 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:

(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.)

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

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

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

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

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

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

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

g. N-ethylamphetamine.

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

SECTION 2. AMENDMENT. Subsections 4, 6, and 7 of section 19-03.1-07 of the North Dakota Century Code are amended and reenacted as follows:

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).

~~k.~~ l. Levomethorphan.

~~l.~~ m. Levorphanol.

~~m.~~ n. Metazocine.

~~n.~~ o. Methadone.

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

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

~~q.~~ r. Pethidine (also known as meperidine).

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

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

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

~~u.~~ v. Phenazocine.

~~v.~~ w. Priminodine.

~~w.~~ x. Racemethorphan.

~~x.~~ y. Racemorphan.

~~y.~~ z. Remifentanil.

~~z.~~ aa. Sufentanil.

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.

~~b.~~ c. Pentobarbital.

~~c.~~ d. Phencyclidine.

~~d.~~ e. Secobarbital.

7. Hallucinogenic substances.

~~a. Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration-approved drug product. (Some other names for dronabinol: (6aR-trans)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-01, or (-)-delta-9-(trans)-tetrahydrocannabinol) (THC).~~

~~b.~~ 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].

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. ~~Buprenorphine.~~

~~e.~~ Chlorhexadol.

~~f. 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.~~

e. Embutramide.

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

~~h. Glutethimide.~~

~~i.~~ g. Ketamine.

~~j.~~ h. Lysergic acid.

~~k.~~ i. Lysergic acid amide.

~~l.~~ j. Methyprylon.

~~m.~~ k. Sulfondiethylmethane.

~~n.~~ l. Sulfonethylmethane.

~~o.~~ m. Sulfonmethane.

~~p.~~ 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.

~~b.~~ (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.

~~c.~~ (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.

~~d.~~ (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.

~~e.~~ (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.

~~f.~~ (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.

~~g.~~ (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.

~~h.~~ (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);

~~b. Chlorotestosterone;~~

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

~~c.~~ n. Clostebol (4-chloro-17beta-hydroxyandrost-4-en-3-one);

~~d.~~ o. ~~Dehydrochlormethyltestosterone~~ Dehydrochloromethyltestosterone (4-chloro-17beta-hydroxy-17alpha-methyl-androst-1,4-dien-3-one);

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

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

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

~~g.~~ s. Ethylestrenol (17alpha-ethyl-17beta-hydroxyestr-4-ene);

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

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

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

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

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

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

z. Mestanolone (71alpha-methyl-17beta-hydroxy-5-androstan-3-one);

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

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

~~l. Methandranone;~~

~~m.~~ cc. Methandriol (17alpha-methyl-3beta,17beta-dihydroxyandrost-5-ene);

~~n. Methandrostenolone;~~

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

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

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

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

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

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

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

~~p.~~ kk. Methyltestosterone (17alpha-methyl-17beta-hydroxyandrost-4-en-3-one);

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

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

~~r.~~ nn. Nandrolone (17beta-hydroxyestr-4-en-3-one);

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

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

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

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

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

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

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

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

~~s.~~ ww. Norethandrolone (17alpha-ethyl-17beta-hydroxyestr-4-en-3-one);

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

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

~~u.~~ zz. Oxymesterone (17alpha-methyl-4-17beta-dihydroxyandrost-4-en-3-one);

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

~~w. Stanolone;~~

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

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

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

~~z.~~ eee. Testosterone (17beta-hydroxyandrost-4-en-3-one);

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

~~aa.~~ ggg. 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. 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.

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. Subsections 4 and 6 of section 19-03.1-11 of the North Dakota Century Code are amended and reenacted as follows:

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.

   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. Halazepam.

x. Haloxazolam.

y. Ketazolam.

z. Loprazolam.

aa. Lorazepam.

bb. Lormetazepam.

cc. Mebutamate.

dd. Medazepam.

ee. Meprobamate.

ff. Methohexital.

gg. Methylphenobarbital (also known as mephobarbital).

hh. Midazolam.

ii. Nimetazepam.

jj. Nitrazepam.

kk. Nordiazepam.

ll. Oxazepam.

mm. Oxazolam.

nn. Paraldehyde.

oo. Petrichloral.

pp. Phenobarbital.

qq. Pinazepam.

rr. Prazepam.

ss. Quazepam.

~~tt. Sibutramine.~~

~~uu.~~ tt. Temazepam.

~~vv.~~ uu. Tetrazepam.

~~ww.~~ vv. Triazolam.

~~xx.~~ ww. Zaleplon.

~~yy.~~ xx. Zolpidem.

yy. Zopiclone.

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).

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 buprenorphine or its 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: 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.

SECTION 6. Section 19-03.1-20.1 of the North Dakota Century Code is created and enacted as follows:

19-03.1-20.1. Report of any theft or loss. The registrant shall immediately, within one business day, notify the state board of pharmacy of any theft or significant loss of controlled substances. This report may be telephoned, faxed, or e-mailed to the state board of pharmacy. In addition, significant loss has been further defined to include a list of factors that are relevant in deciding whether a loss was significant. This list is as follows:

1. The actual quantity of controlled substances lost in relation to the type of business;

2. The specific controlled substances lost;

3. Whether the loss of the controlled substances can be associated with access to those controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the controlled substances;

4. A pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses; and, if known

5. Whether specific controlled substances are likely candidates for diversion; and

6. Local trends and other indicators of the diversion potential of the missing controlled substance.

SECTION 7. AMENDMENT. Section 19-03.1-22 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-22. Prescriptions.

1. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature. The prescription may not be filled more than six months after the date it was written.

2. In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing, and filed by the pharmacy. Prescriptions must be retained in conformity with the requirements of section 19-03.1-20. No prescription for a schedule II substance may be refilled.

3. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this chapter or chapter 19-02.1, may not be dispensed without a written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner. Any oral prescription for such drugs must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank ~~and must be signed within seven days by the practitioner who issued the same~~. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

4. Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance included in schedule V must be dispensed without the written or oral prescription of a practitioner. The prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times unless renewed by the practitioner. Any oral prescription for such compound, mixture, or preparation must be promptly reduced to writing by the pharmacist, intern, or technician on a new prescription blank ~~and must be signed within seven days by the practitioner who issued the prescription~~. When the patient is a hospice patient or resides in a licensed long-term care facility and the prescription has been signed by

the practitioner before faxing, the facsimile may serve as the original prescription without another signature.

Approved March 23, 2007
Filed March 23, 2007

CHAPTER 209

SENATE BILL NO. 2317

(Senators Oehlke, Christmann)
(Representative Heller)

SALVIA DIVINORUM AS CONTROLLED SUBSTANCE

AN ACT to create and enact a new subdivision to subsection 5 of section 19-03.1-05 of the North Dakota Century Code, relating to including salvia divinorum as a schedule I controlled substance.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[125] **SECTION 1.** A new subdivision to subsection 5 of section 19-03.1-05 of the North Dakota Century Code is created and enacted as follows:

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

Approved April 26, 2007
Filed April 27, 2007

[125] Section 19-03.1-05 was also amended by section 1 of House Bill No. 1055, chapter 208.

CHAPTER 210

HOUSE BILL NO. 1206

(Representatives Ruby, Bellew, DeKrey, Price)
(Senators Fiebiger, Nething)

DRUG ADDICTION EVALUATIONS

AN ACT to amend and reenact subsection 7 of section 19-03.1-23 of the North Dakota Century Code, relating to drug addiction evaluations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[126] **SECTION 1. AMENDMENT.** Subsection 7 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

7. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 ~~must~~ 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. ~~The~~ If ordered, the evaluation must be submitted to the court ~~for consideration when~~ before imposing punishment for a felony violation ~~of this chapter or chapter 19-03.4, and may be submitted before or after the imposing of punishment for~~ or a misdemeanor violation ~~of this chapter or chapter 19-03.4~~.

Approved March 2, 2007
Filed March 2, 2007

[126] Section 19-03.1-23 was also amended by section 1 of House Bill No. 1224, chapter 211.

CHAPTER 211

HOUSE BILL NO. 1224

(Representatives Klemin, Kretschmar, L. Meier)
(Senators Dever, Lyson, Nething)

COURT RECORDS SEALED

AN ACT to amend and reenact subsection 8 of section 19-03.1-23, subsection 3 of section 29-10.2-05, and section 31-13-07 of the North Dakota Century Code, relating to changing expunged records to sealed records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[127] **SECTION 1. AMENDMENT.** Subsection 8 of section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Subsection 3 of section 29-10.2-05 of the North Dakota Century Code is amended and reenacted as follows:

3. ~~No~~ A report or presentment of a state grand jury relating to an individual which is not accompanied by a true bill of indictment may not be made public or be published until the individual concerned has been furnished a copy ~~thereof~~ of the report and given thirty days to file with the district court a motion to suppress or ~~expunge~~ seal the report or ~~that~~ a portion ~~which~~ that is improper and unlawful. ~~Any such~~ The motion, whether granted or denied, automatically acts as a stay of public announcement of ~~such~~ the report, or portion ~~thereof~~ of the report, until the district court's ruling on the motion is either affirmed or denied by an appellate court, or until the time ~~within~~ in which ~~such~~ the order may be ~~so~~ appealed has expired, whichever occurs first. The report or portion of the report which is suppressed or sealed may not be opened even by order of the court.

[128] **SECTION 3. AMENDMENT.** Section 31-13-07 of the North Dakota Century Code is amended and reenacted as follows:

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[127] Section 19-03.1-23 was also amended by section 1 of House Bill No. 1206, chapter 210.

[128] Section 31-13-07 was also amended by section 2 of House Bill No. 1197, chapter 285.

31-13-07. Removal of DNA profiles from data base. A person whose DNA profile has been included in the data base ~~pursuant to~~ under this chapter may petition the district court ~~for expungement~~ to seal the court record on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The laboratory shall expunge all identifiable information in the data base pertaining to the person and destroy all samples from the person upon receipt of a certified order. The detention, arrest, or conviction of a person based upon data base information is not invalidated if it is later determined that the specimens or samples were obtained or placed in the data base by mistake. The sealed record may not be opened even by order of the court.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 212

SENATE BILL NO. 2134

(Senator J. Lee)
(At the request of the State Board of Pharmacy)

PRESCRIPTION DRUG MONITORING PROGRAM

AN ACT to create and enact chapter 19-03.5 of the North Dakota Century Code, relating to a prescription drug monitoring program for controlled substances; to repeal section 50-06-27 of the North Dakota Century Code, relating to a prescription drug monitoring program; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 19-03.5 of the North Dakota Century Code is created and enacted as follows:

19-03.5-01. Definitions.

1. "Board" means the state board of pharmacy.

2. "Central repository" means a place where electronic data related to the prescribing and dispensing of controlled substances is collected.

3. "Controlled substance" means a drug, substance, or immediate precursor defined in section 19-03.1-01 and nonscheduled substances containing tramadol or carisoprodol.

4. "De-identified information" means health information that is not individually identifiable information because an expert has made that determination under title 45, Code of Federal Regulations, section 164.514 or direct identifiers and specified demographic information have been removed in accordance with the requirements of that section.

5. "Dispense" means to deliver a controlled substance to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery.

6. "Dispenser" means an individual who delivers a controlled substance to the ultimate user but does not include a licensed hospital pharmacy that provides a controlled substance for the purpose of inpatient hospital care or a licensed health care practitioner or other authorized individual in those instances when the practitioner administers a controlled substance to a patient.

7. "Individually identifiable health information" has the meaning set forth in title 45, Code of Federal Regulations, section 160.103.

8. "Patient" means an individual or the owner of an animal who is the ultimate user of a controlled substance for whom a prescription is issued or for whom a controlled substance is dispensed.

9. "Prescriber" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice.

10. "Program" means the prescription drug monitoring program implemented under this chapter.

19-03.5-02. Requirements for prescription drug monitoring program.

1. The board shall establish and maintain a program for the monitoring of prescribing and dispensing of all controlled substances.

2. Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a controlled substance. The information submitted for each prescription must include all of the data elements in the American society for automation in pharmacy rules-based standard implementation guide for prescription monitoring programs issued August 31, 2005, version 003, release 000.

3. Each dispenser shall submit the information in accordance with transmission methods and frequency established by the board.

4. The board may issue an extension of time to a dispenser that is unable to submit prescription information by electronic means.

19-03.5-03. Access to prescription information.

1. Information submitted to the central repository is confidential and may not be disclosed except as provided in this section.

2. The board shall maintain procedures to ensure that the privacy, confidentiality, and security of patient information collected, recorded, transmitted, and maintained is not disclosed except as provided in this section.

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.

4. The board shall maintain a record of each person who requests information from the central repository. The board may use the records to document and report statistics and outcomes. The board may provide records of the requests for information to:

a. A board or regulatory agency responsible for the licensing of individuals authorized to prescribe or dispense controlled substances that is engaged in an investigation of the individual who submitted the request for information from the central repository; and

b. Local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances for the purpose of an active investigation of an individual who requested information from the central repository.

19-03.5-04. Authority to contract. The board is authorized to contract with another agency of this state or with a private vendor to facilitate the effective operation of the prescription drug monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription drug information in this chapter and is subject to termination or sanction or both for unlawful acts.

19-03.5-05. Immunity. Nothing in this chapter requires a prescriber or dispenser to obtain information about a patient from the central repository prior to prescribing or dispensing a controlled substance. A prescriber, dispenser, or other health care practitioner may not be held liable in damages to any person in any civil action on the basis that the prescriber, dispenser, or other health care practitioner did or did not seek to obtain information from the central repository. Unless there is shown a lack of good faith, the board, any other state agency, a prescriber,

dispenser, or any other individual in proper possession of information provided under this chapter may not be subject to any civil liability by reason of:

1. The furnishing of information under the conditions provided in this chapter;

2. The receipt and use of, or reliance on, such information;

3. The fact that any such information was not furnished; or

4. The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

19-03.5-06. Data review and referral - Corrections.

1. a. The board shall review the information received by the central repository to determine if there is reason to believe:

(1) A prescriber or dispenser may have engaged in an activity that may be a basis for disciplinary action by the board or regulatory agency responsible for the licensing of the prescriber or dispenser; or

(2) A patient may have misused, abused, or diverted a controlled substance.

b. If the board determines that there is reason to believe that any of the acts described in subdivision a may have occurred, the board may notify the appropriate law enforcement agency or the board or regulatory agency responsible for the licensing of the prescriber or dispenser. The advisory council described in section 19-03.5-07 shall recommend guidelines to the board for reviewing data and making determinations with respect to the referral of patients, prescribers, or dispensers to law enforcement or appropriate regulatory authorities.

2. A patient, dispenser, or prescriber may request that erroneous information contained in the central repository be corrected or deleted. The board shall review the request to determine if the information is erroneous with respect to the patient, prescriber, or dispenser. The board shall correct any erroneous information the board discovers due to the request for review by a patient, prescriber, or dispenser.

3. The board shall adopt a procedure to allow information contained in the central repository to be shared with officials in other states acting for the purpose of controlled substance monitoring and for requesting and receiving similar controlled substance monitoring information from other states.

19-03.5-07. Advisory council.

1. An advisory council is established to advise and make recommendations to the board regarding how to best use the program to improve patient care and foster the goal of reducing misuse, abuse, and diversion of controlled substances; to encourage cooperation and coordination among state, local, and federal agencies and other states

to reduce the misuse, abuse, and diversion of controlled substances; and to provide advice and recommendations to the board regarding any other matters as requested by the board. The advisory council may have access to central repository information to fulfill its duties.

2. The advisory council must consist of:

   a. One dispenser selected by the board;

   b. One physician selected by the North Dakota medical association;

   c. One prescriber selected by the board of nursing;

   d. A designee of the attorney general;

   e. A designee of the department of human services;

   f. One prescriber selected by the board of medical examiners;

   g. One prescriber selected by the North Dakota nurses association; and

   h. Any other prescriber or dispenser determined by the board to be necessary to meet a mandate of, or avoid a delay in implementing, an appropriations measure. The number of additional members selected by the board must be limited to the number necessary to meet the mandate or avoid the delay of an appropriation.

3. The advisory council shall make recommendations to the board regarding:

   a. Safeguards for the release of information to individuals who have access to the information contained in the central repository;

   b. The confidentiality of program information and the integrity of the patient's relationship with the patient's health care provider;

   c. Advancing the purposes of the program, including enhancement of the quality of health care delivery in this state; and

   d. The continued benefits of maintaining the program in relationship to the cost and other burdens to the state.

4. The board may provide reimbursement of expenses and per diem to members of the advisory council within the limits provided in state law.

19-03.5-08. Extraterritorial application. The board may provide data in the central repository to a practitioner or controlled substances monitoring system in another state, if the disclosure to a practitioner or the prescription drug monitoring program located in this state is authorized by this chapter.

19-03.5-09. Authority to adopt rules. The board may adopt rules that set forth the procedures and methods for implementing this chapter.

19-03.5-10. Reporting unlawful acts and penalties.

1. The board may report to a dispenser's licensing board any dispenser who knowingly fails to submit prescription drug monitoring information to the board as required by this chapter or who knowingly submits incorrect prescription information to the board.

2. A person, including a vendor, who uses or discloses prescription drug monitoring information in violation of this chapter is subject to the penalty provided in section 12.1-13-01.

SECTION 2. REPEAL. Section 50-06-27 of the North Dakota Century Code is repealed.

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

Approved April 4, 2007
Filed April 5, 2007

CHAPTER 213

HOUSE BILL NO. 1121

(Transportation Committee)
(At the request of the State Department of Health)

FUEL SALES AND DEFINITIONS

AN ACT to create and enact section 19-10-03.3 of the North Dakota Century Code, relating to the retail sale of alternative fuels; and to amend and reenact sections 19-10-01 and 19-10-10 of the North Dakota Century Code, relating to petroleum product definitions and specifications.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-10-01 of the North Dakota Century Code is amended and reenacted as follows:

19-10-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Adulterated", when used to describe any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which fails to meet the specifications prescribed by this chapter.

2. "Alternative fuel" means a fuel for an engine or vehicle, or used as heating oil, other than a petroleum-based fuel.

3. "Biodiesel" means any non-petroleum-based diesel fuel made from renewable resources such as vegetable oils or animal fats.

4. "Department" means the state department of health.

~~3.~~ 5. "Diesel fuel" is any petroleum product intended for use or offered for sale as a fuel for engines in which the fuel is injected into the combustion chamber and ignited by pressure without electric spark.

~~4.~~ 6. "Gasoline" is a refined petroleum naphtha which by its composition is suitable for use as a carburant in internal combustion engines.

~~5.~~ 7. "Heating oil" is any ~~petroleum~~ product intended for use or offered for sale as a furnace oil, range oil, or fuel oil for heating and cooking purposes to be used in burners other than wick burners regardless of whether the product is designated as furnace oil, range oil, fuel oil, gas oil, or is given any other name or designation.

~~6.~~ 8. "Kerosene" is a petroleum fraction which is free from water, additives, foreign or suspended matter, and is suitable for use as an illuminating oil.

~~7.~~ 9. "Lubricating oil" is any petroleum, or other product, used for the purpose of reducing friction, heat, or wear in automobiles, tractors, gasoline engines, diesel engines, and other machines.

~~8.~~ 10. "Misbranded", when used in connection with any petroleum or alternative fuel product, denotes a petroleum or alternative fuel product which is not labeled as required under the provisions of this chapter.

~~9.~~ 11. "Sell" and "sale" includes the keeping, offering, or exposing for sale, transportation, or exchange of the restricted or prohibited article.

~~10.~~ 12. "Tractor fuel" is any ~~petroleum~~ product, other than gasoline or kerosene, intended for use or offered for sale as a fuel for tractors, regardless of whether the product is designated as distillate, gas oil, fuel oil, or is given any other name or designation.

SECTION 2. Section 19-10-03.3 of the North Dakota Century Code is created and enacted as follows:

19-10-03.3. Retail sale of alternative fuels - Notice required. A dealer may not sell at retail alternative fuel unless the dispensing unit and price advertising contains the name and main components of the alternative fuel or alternative fuel blend. The disclosure must follow the same labeling specifications that apply for petroleum-based fuels. The department shall adopt rules under chapter 28-32 for labeling of petroleum products and alternative fuels. A producer of alternative fuels or alternative fuel blends may provide a retailer with a label promoting the benefits of the alternative fuel if the label meets the requirements of this section.

SECTION 3. AMENDMENT. Section 19-10-10 of the North Dakota Century Code is amended and reenacted as follows:

19-10-10. Specifications for petroleum products - Tests used. Specifications for gasoline, kerosene, tractor fuel, diesel oil, heating oil, lubricating oil, alternative fuels, and liquefied petroleum gases, including propane, propylene, normal butane or isobutane, and butylene, must be determined by the department and must be based upon nationally recognized standards. When so determined by the department and adopted and promulgated as regulations and orders of the department in accordance with the provisions of chapter 28-32, such specifications must be the specifications for such petroleum products sold in this state and official tests of such petroleum products must be based upon test specifications so determined adopted and promulgated.

Approved March 23, 2007
Filed March 23, 2007

CHAPTER 214

SENATE BILL NO. 2159

(Senators Heitkamp, Nething)
(Representatives Gulleson, Headland, Kroeber, Pollert)

ETHANOL DISPENSING UNIT LABELING REQUIREMENTS

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 - ~~Notice required~~ Label requirements. No dealer may 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 March 7, 2007
Filed March 8, 2007

CHAPTER 215

SENATE BILL NO. 2323

(Senators Wanzek, Christmann, Klein)
(Representatives D. Johnson, Mueller, Pollert)

PESTICIDE REGISTRATION FEES

AN ACT to amend and reenact section 19-18-04 of the North Dakota Century Code, relating to pesticide registration fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 19-18-04 of the North Dakota Century Code is amended and reenacted as follows:

19-18-04. ~~(Effective through June 30, 2007)~~ Registration - Fees.

1. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

   a. Give the name and address of each manufacturer or distributor.

   b. Give the name and brand of each product to be registered.

   c. Be accompanied by a current label of each product to be registered.

   d. Be accompanied by a registration fee of three hundred fifty dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.

   e. Be accompanied by a material safety data sheet for each product to be registered.

2. The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.

3. Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership. A penalty of fifty percent of the license or registration fee

must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

4. This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

(Effective July 1, 2007) Registration - Fees. Any person before selling or offering for sale any pesticide for use within this state shall file biennially with the commissioner an application for registration of the pesticide. The application must:

1. Give the name and address of each manufacturer or distributor.

2. Give the name and brand of each product to be registered.

3. Be accompanied by a current label of each product to be registered.

4. Be accompanied by a registration fee of three hundred dollars for each product to be registered. At the close of each calendar month, the commissioner shall transmit to the state treasurer all moneys received for the registrations. The state treasurer shall credit fifty dollars for each registered product to the general fund in the state treasury and the remainder of the registration fee for each registered product to the environment and rangeland protection fund.

5. Be accompanied by a material safety data sheet for each product to be registered.

The commissioner may require an applicant or registrant to provide efficacy, toxicity, residue, and any other data necessary to determine if the pesticide will perform its intended function without unreasonable adverse effects on the environment. If the commissioner finds that the application conforms to law, the commissioner shall issue to the applicant a certificate of registration of the product.

Each registration covers a designated two-year period beginning January first of each even-numbered year and expiring December thirty-first of the following year. A certificate of registration may not be issued for a term longer than two years, and is not transferable from one person to another, or from the ownership to whom issued to another ownership. A penalty of fifty percent of the license or registration fee must be imposed if the license or certificate of registration is not applied for on or before January thirty-first following the expiration date. Each product must go through a two-year discontinuance period in order to clear all outstanding products in the channel of trade.

This section does not apply to a pesticide sold by a retail dealer if the registration fee has been paid by the manufacturer, jobber, or any other person, as required by this section.

Approved April 26, 2007
Filed April 27, 2007