

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2218
(Senators J. Lee, Kilzer, Robinson)
(Representatives Glassheim, N. Johnson, R. Kelsch)

AN ACT to create and enact a new section to chapter 19-02.1 and section 19-03.1-22.4 of the North Dakota Century Code, relating to requirements for prescribing and dispensing controlled substances and certain other specified drugs and requirements for dispensing controlled substances by means of the internet; to amend and reenact subsection 2 of section 19-02.1-15 and section 19-03.1-23 of the North Dakota Century Code, relating to the exclusion from the exemption for dispensing certain drugs and penalties for unlawful distribution or dispensing of controlled substances and counterfeit controlled substances by means of the internet; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 19-02.1 of the North Dakota Century Code is created and enacted as follows:

Requirements for dispensing controlled substances and specified drugs - Penalty.

1. As used in this section:

- a. "Controlled substance" has the meaning set forth in section 19-03.1-01.
- b. "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other practitioners, and must include one of the following actions:
 - (1) The prescribing practitioner examines the patient at the time the prescription or drug order is issued;
 - (2) The prescribing practitioner has performed a prior examination of the patient within twelve months;
 - (3) Another prescribing practitioner practicing within the same health system, group, or clinic as the prescribing practitioner has examined the patient within twelve months;
 - (4) A consulting practitioner to whom the prescribing practitioner has referred the patient has examined the patient within twelve months; or
 - (5) The referring practitioner has performed an examination in the case of a consultant practitioner issuing a prescription or drug order when providing services by means of telemedicine.
- c. "Deliver, distribute, or dispense by means of the internet" refers, respectively, to delivery, distribution, or dispensing of a controlled substance or specified drug that is caused or facilitated by means of the internet.
- d. "Internet" and "practice of telemedicine" have the meanings set forth in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 [Pub. L. 110-425; 21 U.S.C. 802-803].

- e. "Specified drugs" mean:
 - (1) A skeletal muscle relaxant containing carisoprodol, chlorphenesin, chlorzoxazone, metaxalone, or methocarbamol;
 - (2) A centrally acting analgesic with opioid activity such as tapentadol or tramadol;
 - (3) A drug containing butalbital; and
 - (4) Phosphodiesterase type 5 inhibitors when used to treat erectile dysfunction.
- f. "Valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by a practitioner who has conducted an in-person medical evaluation of the patient.
- 2. A controlled substance or specified drug may not be delivered, distributed, or dispensed without a valid prescription.
- 3. This section applies to the delivery, distribution, and dispensing of a controlled substance or specified drug by means of the internet or any other electronic means from a location whether within or outside this state to a person or an address in this state.
- 4. Nothing in this section may be construed:
 - a. To apply to the delivery, distribution, or dispensing of a controlled substance or specified drug by a practitioner engaged in the practice of telemedicine in accordance with applicable federal and state laws;
 - b. To prohibit or limit the use of electronic prescriptions for a controlled substance or any other drug;
 - c. To prohibit a physician from prescribing a controlled substance or specified drug through the use of a guideline or protocol established with an allied health professional, resident, or medical student under the direction and supervision of the physician;
 - d. To prohibit a practitioner from issuing a prescription or dispensing a controlled substance or specified drug in accordance with administrative rules adopted by a state agency authorizing expedited partner therapy in the management of a sexually transmitted disease; or
 - e. To limit prescription, administration, or dispensing of a controlled substance or specified drug through a distribution mechanism approved by the state health officer in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent.
- 5. A person who violates this section is guilty of a class C felony.

SECTION 2. AMENDMENT. Subsection 2 of section 19-02.1-15 of the North Dakota Century Code is amended and reenacted as follows:

- 2. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug is exempt from the requirements of section 19-02.1-14, except subsection 1, subdivisions b and c of subsection 10, subsections 12 and 13, and the packaging requirements of subsections 8 and 9 of section 19-02.1-14, if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber and, if stated in the prescription, the name of the patient, and the directions for use and cautionary statements, if any, contained in such prescription. This exemption does not apply to any

drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or electronic means, or to a drug dispensed in violation of subsection 1.

SECTION 3. Section 19-03.1-22.4 of the North Dakota Century Code is created and enacted as follows:

19-03.1-22.4. Controlled substances dispensed by means of the internet.

1. As used in this section:

a. "Covering practitioner" means, with respect to a patient, a practitioner who conducts a medical evaluation, other than an in-person medical evaluation, at the request of a practitioner who:

(1) Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous twenty-four months; and

(2) Is temporarily unavailable to conduct the evaluation of the patient.

b. "Deliver, distribute, or dispense by means of the internet" refers, respectively, to delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the internet.

c. "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

d. "Internet" and "practice of telemedicine" have the meanings set forth in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 [Pub. L. 110-425; 21 U.S.C. 802-803].

e. "Valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by a:

(1) Practitioner who has conducted at least one in-person medical evaluation of the patient; or

(2) Covering practitioner.

2. A controlled substance that is a prescription drug may not be delivered, distributed, or dispensed by means of the internet without a valid prescription, but nothing in this subsection may be construed to imply that one in-person medical evaluation by itself demonstrates that a prescription has been validly issued for a legitimate medical purpose within the usual course of professional practice.

3. This section applies to the delivery, distribution, and dispensing of a controlled substance by means of the internet from a location whether within or outside this state to a person or an address in this state.

4. Nothing in this section applies to the delivery, distribution, or dispensing of a controlled substance by a practitioner engaged in the practice of telemedicine in accordance with applicable federal and state laws.

5. Nothing in this section may be construed as authorizing, prohibiting, or limiting the use of electronic prescriptions for controlled substances.

SECTION 4. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class A felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least five years.
 - (2) For a third or subsequent offense, to imprisonment for twenty years.
 - b. Any other controlled substance classified in schedule I, II, or III, is guilty of a class B felony, except that any person who delivers one hundred pounds [45.36 kilograms] or more of marijuana is guilty of a class A felony. Except for a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, any person found guilty under this subdivision must be sentenced:
 - (1) For a second offense, to imprisonment for at least three years.
 - (2) For a third or subsequent offense, to imprisonment for ten years.
 - c. A substance classified in schedule IV, is guilty of a class C felony and must be sentenced:
 - (1) For a second offense, to imprisonment for at least six months.
 - (2) For a third offense, to imprisonment for at least one year.
 - (3) For a fourth or subsequent offense, to imprisonment for five years.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I or II which is a narcotic drug, is guilty of a class A felony.
 - b. Any other counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - c. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - d. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
3. For second or subsequent offenders, in addition to any other penalty imposed under this section, a person who violates this chapter, except a person who manufactures, delivers, or possesses with the intent to manufacture or deliver marijuana, is subject to, and the court shall impose, the following penalties to run consecutively to any other sentence imposed:

- a. Any person, eighteen years of age or older, who violates this section by willfully manufacturing, delivering, or possessing with intent to manufacture or deliver a controlled substance in or on, or within one thousand feet [300.48 meters] of the real property comprising a public or private elementary or secondary school or a public career and technical education school is subject to an eight-year term of imprisonment.
 - b. If the defendant was at least twenty-one years of age at the time of the offense, and delivered a controlled substance to a person under the age of eighteen, the defendant must be sentenced to imprisonment for at least eight years. It is not a defense that the defendant did not know the age of a person protected under this subdivision.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony and must be sentenced:
 - a. For a second or subsequent offense, to imprisonment for at least five years.
 - b. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. A violation of this chapter or a law of another state or the federal government which is equivalent to an offense under this chapter committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsections 1, 3, and 4. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
 - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
 - b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.
7. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance 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. Except as provided in this subsection, any person who violates this subsection is guilty of a class C felony. If the person is in or on, or within one thousand feet [300.48 meters] of 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. Any person who violates this subsection regarding possession of one-half ounce [14.175 grams] to one ounce [28.35 grams] of marijuana is guilty of a class A misdemeanor. Any person, except a person operating a motor vehicle, who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana is guilty of a class B misdemeanor. Any person who violates this subsection regarding possession of less than one-half ounce [14.175 grams] of marijuana while operating a motor vehicle is guilty of a class A misdemeanor.

- ~~7.~~ 8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
- ~~8.~~ 9. 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 seal the court record of that conviction 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.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2218.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 78 Nays 0 Absent 16

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State